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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF FRESNO

UNLIMITED CIVIL JURISDICTION

THE TWO HUNDRED, an unincorporated association of civil rights leaders, including LETICIA RODRIGUEZ, TERESA MURILLO, and EUGENIA PEREZ, Plaintiffs/Petitioners, v. CALIFORNIA AIR RESOURCES BOARD, RICHARD COREY, in his Official Capacity, and DOES 1-50, Respondents/Defendants.	Case No. 18CECG01494 **FIRST AMENDED[1] VERIFIED PETITION FOR WRIT OF MANDATE; COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF** **[Code Civ. Proc. §§ 1085, 1094.5, 1060, 526; Gov. Code § 12955 *et seq.* (FEHA); 42 U.S.C. § 3601 *et seq.* (FHA); Cal. Const. Art. I, § 7; Art. IV, § 16; U.S. Const. Amd. 14, § 1; 42 U.S.C. § 1983; Pub. Res. Code § 12000 *et seq.* (CEQA); Gov. Code § 11346 *et seq.* (APA); H&S Code § 38500 *et seq.* (GWSA); H&S Code § 39000 *et seq.* (CCAA); Gov. Code § 65088 *et seq.* (Congestion Management Plan)]**

[1] Principal added and revised allegations are at ¶¶ 262-351 and 379 (pages 79-108, 112) below. A full comparison between this First Amended Petition/Complaint and the original Petition/ Complaint, generated using Adobe Acrobat® Compare software, is attached as Exhibit 3.

Table of Contents

Page

I. INTRODUCTION AND SUMMARY OF REQUESTED RELIEF 4

A. California's Greenhouse Gas Policies and Housing-Induced Poverty Crisis 4

B. California's Historical Use of Environmental and Zoning Laws and Regulations to Oppress and Marginalize Minority Communities..... 10

C. Four New GHG Housing Measures in CARB's 2017 Scoping Plan Are Unlawful, Unconstitutional, and Would Exacerbate the Housing-Induced Poverty Crisis 12

II. JURISDICTION AND VENUE 21

III. PARTIES 22

IV. GENERAL ALLEGATIONS 32

A. California's Statutory Scheme To Reduce Greenhouse Gas Emissions and Avoid Disparate Impacts..... 32

B. The 2017 Scoping Plan 34

C. CARB's Improper "Cumulative Gap" Reduction Requirement 36

D. The Four New, Unlawful GHG Housing Measures the 2017 Scoping Plan Authorizes 42

1. Unlawful VMT Reduction Requirement..... 42

2. Unlawful CEQA Net Zero GHG Threshold 48

3. Unlawful Per Capita GHG Targets for Local Climate Action Plans 54

4. Appendix C "Vibrant Communities" Policies Incorporating Unlawful VMT, "Net Zero" and CO2 Per Capita Standards 59

E. CARB's Inadequate Environmental Analysis and Adverse Environmental Effects of the 2017 Scoping Plan 65

1. Deficient Project Description..... 66

2. Improper Project Objectives 67

3. Illegal Piecemealing..... 69

4. Inadequate Impact Analysis 69

F. CARB's Insufficient Fiscal Analysis and Failure To Comply with the APA's Cost-Benefit Analyis Requirements..... 73

G. The Blatantly Discriminatory Impacts of CARB's 2017 Scoping Plan..... 76

H. CARB'S GHG Housing Measures Are "Underground Regulations" and Ultra Vires 107

Table of Contents (Continued)

Page

FIRST CAUSE OF ACTION (Fair Employment and Housing Act, Gov. Code § 12955 *et seq.*) 108

SECOND CAUSE OF ACTION (Federal Housing Act and HUD Regulations, 42 U.S.C. § 3601 *et seq.*; 24 C.F.R. Part 100) 109

THIRD CAUSE OF ACTION (Denial of Due Process, Cal. Const. Art. I, § 7; U.S. Const. Amd. 14, § 1) 111

FOURTH CAUSE OF ACTION (Denial of Equal Protection, Cal. Const. Art. I, § 7, Art. IV § 16; U.S. Const. Amd. 14, § 1) 111

FIFTH CAUSE OF ACTION (Violations of CEQA, Pub. Res. Code § 21000 *et seq.* and CEQA Guidelines, 14 C.C.R. § 15000 *et seq.*) 112

SIXTH CAUSE OF ACTION (Violations of APA, Gov. Code § 11346 *et seq.*) 116

SEVENTH CAUSE OF ACTION (Violations of the California Global Warming Solutions Act, Health & Safety Code § 38500 *et seq.*) 118

EIGHTH CAUSE OF ACTION (Violations of the Health & Safety Code, § 39000 *et seq.*, including the California Clean Air Act, Stats. 1988, ch. 1568 (AB 2595)) 120

NINTH CAUSE OF ACTION (Violations of the APA – Underground Regulations, Gov. Code § 11340 – 11365) 123

TENTH CAUSE OF ACTION (Ultra Vires Agency Action, Cal. Code of Civil Proc. § 1085) 124

PRAYER FOR RELIEF 126

I. INTRODUCTION AND SUMMARY OF REQUESTED RELIEF

A. California's Greenhouse Gas Policies and Housing-Induced Poverty Crisis

1. California's reputation as a global climate leader is built on the state's dual claims of substantially reducing greenhouse gas ("GHG") emissions while simultaneously enjoying a thriving economy. Neither claim is true.

2. California has made far less progress in reducing GHG emissions than other states. Since the effective date of California's landmark GHG reduction law, the Global Warming Solutions Act,[2] 41 states have reduced per capita GHG emissions by more than California

3. California's lead climate agency, the California Air Resources Board ("CARB"), has ignored California's modest scale of GHG reductions, as well as the highly regressive costs imposed on current state residents by CARB's climate programs.

4. Others have been more forthcoming. Governor Jerry Brown acknowledged in 2017 that the state's lauded cap-and-trade program, which the non-partisan state Legislative Analysist's Office ("LAO") concluded would cost consumers between 24 cents and 73 cents more per gallon of gasoline by 2031,[3] actually "is not that important [for greenhouse gas reduction]. I know that. I'm Mr. 'It Ain't That Much.' It isn't that much. Everybody here [in a European climate change conference] is hype, hype to the skies."[4]

5. Governor Brown's acknowledgement was prompted by a report from Mother Jones—not CARB—that high rainfall had resulted in more hydroelectric power generation from

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[2] The Global Warming Solutions Act of 2006 ("GWSA") is codified at Health and Safety Code ("H&S Code") § 38500 *et seq.* and became effective in 2007. The Act is often referred to as "AB 32", the assembly bill number assigned to the legislation. AB 32 required California to reduce GHG emissions from a "business as usual" scenario in 2020 to the state's 1990 GHG emission level. AB 32 was amended in 2017 by Senate Bill 32 by the same author. SB 32 established a new GHG reduction mandate of 40% below California's 1990 GHG levels by 2030.

[3] LAO, Letter to Assembly Member Fong (Mar. 29, 2017), www.lao.ca.gov/letters/2017/fong-fuels-cap-and-trade.pdf.

[4] Julie Cart, *Weather Helped California's Greenhouse Gas Emissions Drop 5% Last Year*, CALMatters (Dec. 2, 2017), https://timesofsandiego.com/tech/2017/12/02/weather-helped-californias-greenhouse-gas-emissions-drop-5-last-year/.

existing dams than had occurred during the drought, and that this weather pattern resulted in a 5% decrease in California's GHG emissions.[5]

6. GHG emissions data from California's wildfires are also telling. As reported by the *San Francisco Chronicle* (again not CARB), GHG emissions from all California regulatory efforts "inched down" statewide by 1.5 million metric tons (from total estimated emissions of 440 million metric tons),[6] while just one wildfire near Fresno County (the Rough Fire) produced 6.8 million metric tons of GHGs, and other fires on just federally managed forest lands in California emitted 16 million metric tons of GHGs.[7]

7. Reliance on statewide economic data for the false idea that California's economy is thriving conflates the remarkable stock market profits of San Francisco Bay Area technology companies with disparate economic harms and losses suffered by Latino and African American Californians statewide, and by white and Asian American Californians outside the Bay Area.

8. Since 2007, which included both the global recession and current sustained period of economic recovery, California has had the highest poverty rate in the country—over 8 million people living below the U.S. Census Bureau poverty line when housing costs are taken into account.[8] By another authoritative poverty methodology developed by the United Way of California, which counts housing as well as other basic necessities like transportation and medical costs (and then offsets these with state welfare and related poverty assistance programs), about 40% of Californians "do not have sufficient income to meet their basic cost of living."[9] The

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[5] *Ibid.*

[6] California Air Resources Board, 2017 Edition California Greenhouse Gas Inventory for 2000-2015 (June 2017), https://www.arb.ca.gov/cc/inventory/data/data.htm.

[7] David R Baker, *Huge wildfires can wipe out California's greenhouse gas gains,* SF Chronicle, (Nov. 21, 2017), https://www.sfchronicle.com/bayarea/article/Huge-wildfires-can-wipe-out-California-s-12376324.php.

[8] Liana Fox, The Supplemental Poverty Measure: 2016, U.S. Census Bureau Report Number: P60-261, Table A-5 (Sept. 21, 2017), https://www.census.gov/library/publications/2017/demo/p60-261.html; Dan Walters, *Why does California have the nation's highest poverty level?*, CALMatters (Aug. 13, 2017), https://calmatters.org/articles/california-nations-highest-poverty-level/.

[9] Betsy Block et al., Struggling to Get By: The Real Cost Measure in California 2015, United Ways of California (2016), https://www.unitedwaysca.org/realcost.

Public Policy Institute of California used a methodology that also accounts for the cost of living and independently concluded that about 40% of Californians live in poverty.[10]

9. Poverty is just one of several indicators of the deep economic distress affecting California. California also has the highest homeless population, and the highest homelessness rate, in the nation. According to the U.S. Department of Housing and Urban Development, about 25% of the nation's homeless, or about 135,000 individuals, are in California.[11]

10. National homeownership rates have been recovering since the recession levels, but California's rate has plunged to the second lowest in the country—with homeownership losses steepest and most sustained for California's Latinos and African Americans.[12]

11. As shown in Figure 1, with the exception of white and Asian populations in the five-county Bay Area, elsewhere in California—and for Latino and African American residents statewide—incomes are comparable to national averages.

Figure 1

Median Income in 2007 and 2017, White, Asian, Latino and Black Populations

Bay Area, California excluding the Bay Area, and U.S. excluding California

(nominal current dollars)[13]

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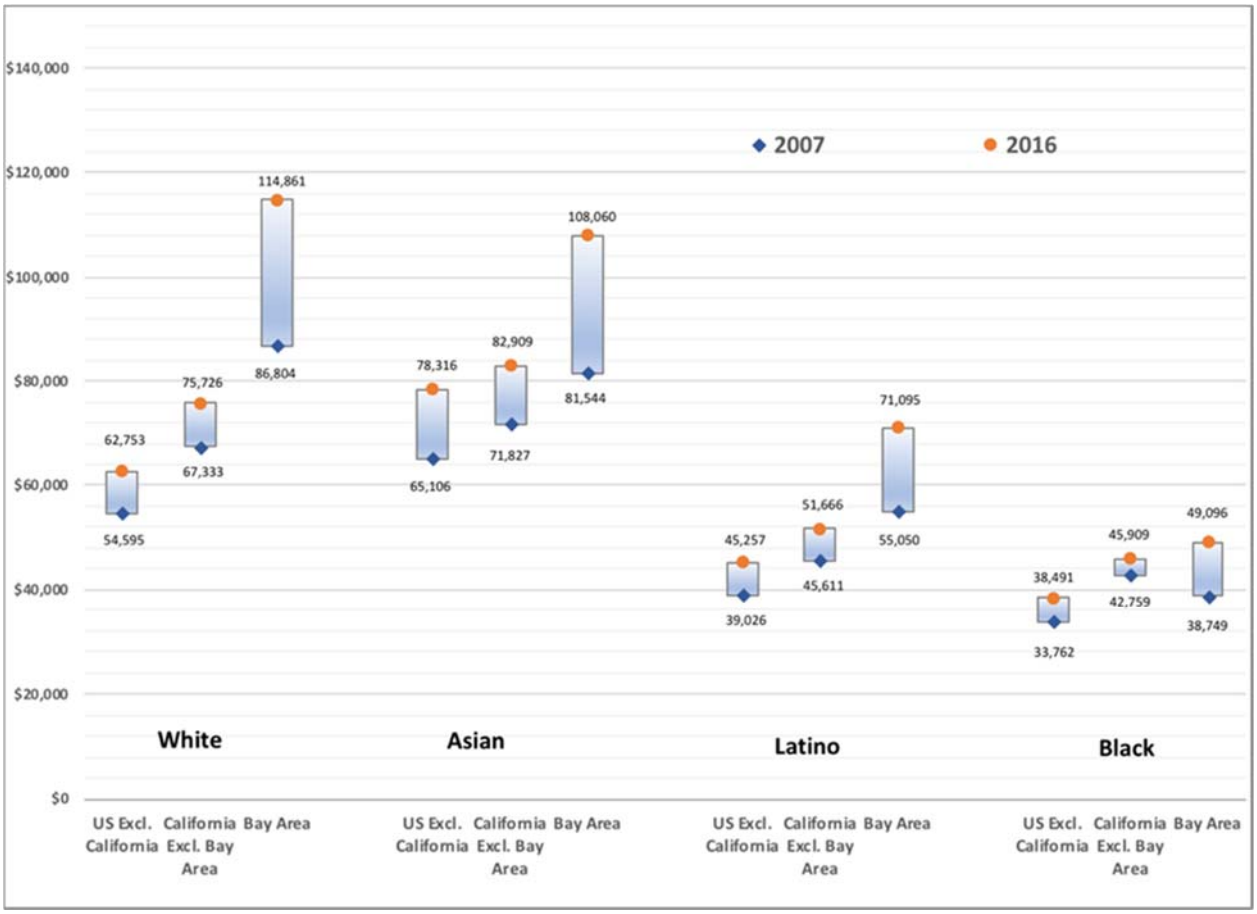
[10] Public Policy Institute of California, Poverty in California (Oct. 2017), http://www.ppic.org/publication/poverty-in-california/.

[11] U.S. Department of Housing and Urban Development, 2017 Annual Homeless Assessment Report to Congress, https://www.hudexchange.info/resources/documents/2017-AHAR-Part-1.pdf; Kevin Fagan et al., *California's homelessness crisis expands to country*, SF Chronicle (Sept. 8, 2017), https://www.sfchronicle.com/news/article/California-s-homelessness-crisis-moves-to-the-12182026.php.

[12] U.S. Census Bureau, Housing Vacancies and Homeownership (CPS/HVS), Table 16. Homeownership Rates for the 75 Largest Metropolitan Statistical Areas: 2015 to 2017, https://www.census.gov/housing/hvs/data/ann17ind.html. See also 2007 and 2016 American Community Survey 1-Year Estimates, Table B25003 series (Tenure in Occupied housing units), California, https://factfinder.census.gov/.

[13] Median income estimated from household income distributions for 2007 and 2016 American Community Survey 1-Year Estimates, Table B19001 series, https://factfinder.census.gov/ (using the estimation methodology described by the California Department of Finance at http://www.dof.ca.gov/Forecasting/Demographics/Census_Data_Center_Network/documents/How_to_Recalculate_a_Median.pdf).



12. However, Californians pay far higher costs for basic necessities. A national survey of housing, food, medical and other costs conducted by the Council for Community & Economic Research showed that in 2017, California was the second most expensive state in the nation (after Hawaii), and had a cost of living index that was 41% higher than the national average.[14] The LAO reported that "California's home prices and rents are higher than just about anywhere else," with average home prices 2.5 times more than the national average and rents 50% higher than the national average.[15] Californians also pay 58% more in average electricity cost per KWh hour (2016 annual average)[16] and about $0.80 cents more per gallon of gas than the national average.[17]

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[14] The 2017 survey by the Council for Community & Economic Research was published by the Missouri Economic Research and Information Center, https://www.missouri economy.org/indicators/cost_of_living/index.stm.

[15] LAO, California's High Housing Costs: Causes and Consequences (Mar. 17, 2015), http://www.lao.ca.gov/reports/2015/finance/housing-costs/housing-costs.aspx.

[16] U.S. Energy Information Agency, Electric Power Annual, Table 2.10 (Dec. 2, 2017), https://www.eia.gov/electricity/annual/ (showing average annual 2016 prices).

[17] American Automobile Association, Regular Gas Prices, http://gasprices.aaa.com/state-gas-price-averages/, last visited April 25, 2018.

13. These high costs for two basic living expenses—electricity and transportation—are highest for those who live in the state's inland areas (and need more heating and cooling than the temperate coast), and drive farthest to jobs due to the acute housing crisis the LAO has concluded is worst in the coastal urban job centers like the San Francisco Bay Area and Los Angeles.[18]

14. An estimated 138,000 commuters enter and exit the nine-county Bay Area megaregion each day.[19] These are workers who are forced to "drive until they qualify" for housing they can afford to buy or rent.

15. San Joaquin County housing prices in cities nearest the Bay Area, such as Stockton, are about one-third lower, even though commute times to San Jose are 77 minutes each direction (80 miles and 2.5 hour daily commutes), and to San Francisco are 80 minutes (82 miles and 3 hour daily commutes).[20] The median housing price in Stockton is about $286,000—still double the national average of $140,000—while the median housing price in San Jose is over $1,076,000 and in San Francisco is over $1,341,000.[21]

16. California's poverty, housing, transportation and homeless crisis have created a perfect storm of economic hardship that has, in the words of the civil rights group Urban Habitat, resulted in the "resegregation" of the Bay Area.[22] Between 2000 and 2014, substantial African American and Latino populations shifted from central cities on and near the Bay, like San Francisco, Oakland, Richmond and San Jose, to eastern outer suburbs like Antioch, and Central Valley communities like Stockton and Suisun City.[23] As reported:

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[18] LAO, California's High Housing Costs: Causes and Consequences (Mar. 17, 2015), http://www.lao.ca.gov/reports/2015/finance/housing-costs/housing-costs.aspx.

[19] Bay Area Council, Another Inconvenient Truth (Aug. 16, 2016), www.bayareaeconomy.org/report/another-inconvenient-truth/.

[20] Commute times from Google navigation, calculated April 25, 2018.

[21] Zillow, Stockton CA Home Prices & Home Values, https://www.zillow.com/stockton-ca/home-values/; San Jose CA Home Prices and Home Values, https://www.zillow.com/san-jose-ca/home-values/; San Francisco CA Home Prices and Home Values, https://www.zillow.com/san-francisco-ca/home-values/.

[22] Urban Habitat League, Race, Inequality, and the Resegregation of the Bay Area (Nov. 2016), http://urbanhabitat.org/new-report-urban-habitat-reveals-growing-inequality-and-resegregation-bay-area-reflecting-divided; see also LAO, Lower Income Households Moving to Inland California from Coast (Sept. 2015), http://www.lao.ca.gov/LAOEconTax/Article/Detail/133.

[23] *Id.* p. 10-11, Maps 5 and 6.

> Low income communities of color are increasingly living at the expanding edges of our region. . . . Those who do live closer to the regional core find themselves unable to afford skyrocketing rents and other necessities; many families are doubling or tripling up in homes, or facing housing instability and homelessness.[24]

17. Los Angeles (#1) and the Bay Area (#3) are already ranked the worst in the nation for traffic congestion, flanking Washington DC (#2).[25] Yet California's climate leaders have decided to intentionally increase traffic congestion—to lengthen commute times and encourage gridlock—to try to get more people to ride buses or take other form of public transit.[26] This climate strategy has already failed, with public transit ridership—particularly by bus—continuing to fall even as California has invested billions in public transit systems.[27]

18. Vehicle miles travelled ("VMT") by Californians forced to drive ever-greater distances to homes they can afford have also increased by 15% between 2000 and 2015.[28] Serious

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[24] *Id.* p. 2.

[25] INRIX Global Traffic Scorecard (2017), http://inrix.com/scorecard/.

[26] Governor's Office of Planning and Research ("OPR"), Updating Transportation Analysis in the CEQA Guidelines, Preliminary Discussion Draft (Aug. 6, 2014), http://www.opr.ca.gov/docs/Final_Preliminary_Discussion_Draft_of_Updates_Implementing_SB_743_080614.pdf, p. 9 (stating that "research indicates that adding new traffic lanes in areas subject to congestion tends to lead to more people driving further distances. (Handy and Boarnet, "DRAFT Policy Brief on Highway Capacity and Induced Travel," (April 2014).) This is because the new roadway capacity may allow increased speeds on the roadway, which then allows people to access more distant locations in a shorter amount of time. Thus, the new roadway capacity may cause people to make trips that they would otherwise avoid because of congestion, or may make driving a more attractive mode of travel"). In subsequent CEQA regulatory proposals, and in pertinent parts of the 2017 Scoping Plan, text supportive of traffic congestion was deleted but the substantive policy direction remains unchanged. Further, the gas tax approved by the Legislature in 2017 was structured to limit money for addressing congestion to $250 million (less than 1% of the $2.88 billion anticipated to be generated by the new taxes). See Jim Miller, *California's gas tax increase is now law. What it costs you and what it fixes.* Sacramento Bee (April 28, 2017), http://www.sacbee.com/news/politics-government/capitol-alert/article147437054.html.

[27] See, e.g., Bay Area Metropolitan Planning Commission, Transit Ridership Report (Sept. 2017), http://www.vitalsigns.mtc.ca.gov/transit-ridership (showing transit ridership decline on a per capita basis by 11% since 1990 with per capita bus boardings declining by 33%); see also University of California Institute for Transportation Studies, Falling Transit Ridership: California and Southern California (Jan. 2018), https://www.scag.ca.gov/Documents/ITS_SCAG_Transit_Ridership.pdf (showing Los Angeles regional public transit decline).

[28] TRIP, California Transportation by the Numbers (Aug. 2016), https://mtc.ca.gov/sites/default/files/CA_Transportation_by_the_Numbers_TRIP_Report_2016.pdf.

adverse health impacts to individual commuters,[29] as well as adverse economic impacts to drivers and the California economy,[30] from excessive commutes have also worsened.

19. In 2016 and 2017, the combination of increased congestion and more VMT reversed decades of air quality improvements in California, and caused increased emissions of both GHG and other traditional air pollutants that cause smog and other adverse health effects,[31] for which reductions have long been mandated under federal and state clean air laws.

20. In short, in the vast majority of California, and for the whole of its Latino and African American populations, the story of California's "thriving" economy is built on CARB's reliance on misleading statewide averages, which are distorted by the unprecedented concentration of stock market wealth created by the Bay Area technology industry.

21. For most Californians, especially those who lost their home in the Great Recession (with foreclosures disproportionately affecting minority homeowners),[32] or who never owned a home and are struggling with college loans or struggling to find a steady job that pays enough to cover California's extraordinary living costs, CARB's assertion that California is a booming, "clean and green" economy is a distant fiction.

B. California's Historical Use of Environmental and Zoning Laws and Regulations to Oppress and Marginalize Minority Communities

22. The current plight of minority communities in California is the product of many decades of institutional racism, perpetuated by school bureaucrats of the 1940's who defended the "separate but equal" system, highway bureaucrats of the 1950's who targeted minority neighborhoods for demolition to make way for freeway routes, urban planning bureaucrats in the

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[29] Carolyn Kylstra, *10 Things Your Commute Does to Your Body*, Time Magazine (Feb. 2014), http://time.com/9912/10-things-your-commute-does-to-your-body/.

[30] TRIP, California Transportation by the Numbers (Aug. 2016), https://mtc.ca.gov/sites/default/files/CA_Transportation_by_the_Numbers_TRIP_Report_2016.pdf (stating that traffic congestion is estimated to cost California $28 billion, including lost time for drivers and businesses, and wasted fuels).

[31] Next 10, 2017 CA Green Innovation Index (Aug. 22, 2017), http://next10.org/sites/default/files/2017-CA-Green-Innovation-Index-2.pdf.

[32] Gillian White, *The Recession's Racial Slant,* Atlantic Magazine (June 24, 2015), https://www.theatlantic.com/business/archive/2015/06/black-recession-housing-race/396725/.

1960's who destroyed minority communities in pursuit of redevelopment, and those who enabled decades of "redlining" practices by insurance and banking bureaucrats aimed at denying minorities equal access to mortgages and home insurance.[33]

23. Environmental regulators are no less susceptible to racism and bias than other regulators. Members of The Two Hundred had to intervene when environmental regulators threatened to block construction of the UC Merced campus, which is the only UC campus in the Central Valley and serves the highest percentage of Latino students of any UC campus.[34]

24. Members of The Two Hundred also had to intervene to require environmental regulators to establish clear standards for the cleanup of contaminated property that blighted many minority neighborhoods, where cleanup and redevelopment could not be financed without the standards that virtually all other states had already adopted.[35]

25. Racial bias in environmental advocacy organizations, including those that heavily lobbied CARB in 2017 Scoping Plan proceedings, was also confirmed in an influential study funded by major foundations that contribute to such organizations.[36]

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[33] See Richard Rothstein, Color of Law: A Forgotten History of How Our Government Segregated America (2017).

[34] UC Merced's Latino undergraduates comprise 53% of the student population, compared to the 21% rate of Latino undergraduate enrollment for the UC system as a whole. University of California System Enrollment (2017), https://www.universityofcalifornia.edu/infocenter/fall-enrollment-glance; UC Merced Fast Facts 2017-2018, https://www.ucmerced.edu/fast-facts; see also John Gamboa, Greenlining Institute, Brownfields, UC Merced, and Fighting for Environmental Equity (March 2018), http://greenlining.org/blog/2018/brownfields-uc-merced-fighting-environmental-equity/.

[35] John Gamboa, Greenlining Institute, Brownfields, UC Merced, and Fighting for Environmental Equity (Mar. 2018), http://greenlining.org/blog/2018/brownfields-uc-merced-fighting-environmental-equity/.

[36] Dorceta E. Taylor, Ph.D., The State of Diversity in Environmental Organizations: Mainstream NOGs, Foundations & Government Agencies (July 2014), http://vaipl.org/wp-content/uploads/2014/10/ExecutiveSummary-Diverse-Green.pdf.

26. Additional studies have confirmed racial bias in environmental organizations, and in media reports on environmental issues.[37] As the newest President of the Sierra Club Board of Directors, African American Aaron Mair recently confirmed: "White privilege and racism within the broader environmental movement is existent and pervasive."[38]

27. The simple fact is that vast areas of California, and disproportionately high numbers of Latino and African American Californians, have fallen into poverty or out of homeownership, and California's climate policies guarantee that housing, transportation and electricity prices will continue to rise while "gateway" jobs to the middle class for those without college degrees, such as manufacturing and logistics, will continue to locate in other states.

C. Four New GHG Housing Measures in CARB's 2017 Scoping Plan Are Unlawful, Unconstitutional, and Would Exacerbate the Housing-Induced Poverty Crisis

28. Defendant/Respondent CARB is the state agency directed by the Legislature to implement SB 32, which requires the State to set a target to reduce its GHG emissions to forty percent below 1990 levels by 2030 ("2030 Target").

29. CARB adopts a "Scoping Plan" every five years, as described in the GWSA. The most recent Scoping Plan sets out the GHG reduction measures that CARB finds will be required to achieve the 2030 Target ("2017 Scoping Plan"). The 2017 Scoping Plan was approved in December 2017.

30. The most staggering, unlawful, and racist components of the 2017 Scoping Plan target new housing. The Plan includes four measures, challenged in this action, that increase the cost and litigation risks of building housing, intentionally worsen congestion (including commute

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[37] See, e.g., Nikhil Swaminathan, *The Unsustainable Whiteness of Green*, Moyers & Company (June 30, 2017), https://billmoyers.com/story/unsustainable-whiteness-green/; Jedidiah Purdy, *Environmentalism's Racist History,* The New Yorker (Aug. 13, 2015), https://www.newyorker.com/news/news-desk/environmentalisms-racist-history; Brentin Mock, *The Green Movement Is Talking About Racism? It's About Time*, Outside Magazine (Feb. 27, 2017), https://www.outsideonline.com/2142326/environmentalism-must-confront-its-social-justice-sins.

[38] Nikhil Swaminathan, *The Unsustainable Whiteness of Green*, Moyers & Company (June 30, 2017), https://billmoyers.com/story/unsustainable-whiteness-green/

times and vehicular emissions) for workers who already spend more than two hours on the road instead of with their families, and further increase the cost of transportation fuels and electricity.

31. These newly-adopted measures (herein the "GHG Housing Measures") are: (A) The new VMT mandate; (B) The new "net zero" CEQA threshold; (C) The new CO2 per capita targets for local climate action plans for 2030 and 2050; and (D) The "Vibrant Communities" policies in Appendix C to the 2017 Scoping Plan, to the extent they incorporate the VMT, net zero and new CO2 per capita targets.[39]

32. The presumptive "net zero" GHG threshold requires offsetting GHG emissions for all new projects including housing under CEQA, the "Vibrant Communities" measures include limiting new housing to the boundaries of existing developed communities, and a mandate to substantially reduce VMT even for electric vehicles by (among other means) intentionally increasing congestion to induce greater reliance on buses and other transit modes.

33. The development of, and the measures included in, the 2017 Scoping Plan was required to be informed by an environmental analysis ("EA") pursuant to the California Environmental Quality Act (Pub. Res. Code § 21000 *et seq.*) ("CEQA"), and an economic fiscal analysis ("FA") as mandated by both the GWSA and the Administrative Procedure Act, Gov. Code § 11346 *et seq.* ("APA").

34. However, in one of many examples of the lack of analysis in the 2017 Scoping Plan and related documents, CARB does not disclose the GHG emission reductions it expects from the GHG Housing Measures. The Scoping Plan also omits any economic analysis that accounts for the cost of these measures on today's Californians, and omits any environmental analysis of the Plan's effects on existing California communities and infrastructure.

35. CARB concluded that in 2017 California's entire economy will emit 440 million metric tons of GHGs per year, and that California will need to reduce emissions by 181.8 million

[39] While CARB styled the GHG Housing Measures as "guidelines", they are self-implementing and unlawful underground regulations. All other components of the 2017 Scoping Plan will be implemented as regulations, such as the Cap and Trade program and low carbon fuel standard, and thus will undergo a formal rulemaking process. However, CARB refused to undertake the same legislatively-mandated public process for the four GHG Housing Measures.

metric tons to meet the 2030 Target. Notwithstanding widespread reports, and public and agency concern about the housing crisis, the homelessness crisis, the housing-induced poverty crisis, and the transportation crisis (collectively referred to herein as the "housing crisis"), neither the 2017 Scoping Plan, nor the environmental or economic analyses, disclose how much of this 181.8 million metric ton GHG reduction must or even may be achieved by constructing the at least three million new homes that experts,[40] and all candidates for Governor,[41] agree California must produce to resolve the current housing shortfall.

36. The core elements of the Scoping Plan related to housing call for new housing in California's existing communities (which comprise 4% of California's lands), with smaller multi-family units instead of single family homes located near public transit to reduce VMT. The 2017 Scoping Plan does not contemplate the need for any new regulations to implement this housing regime. Instead, it includes expert agency conclusions about how CEQA, a 1970 environmental law, must be implemented to achieve California's statutory climate change mandates as well as the unlegislated 2050 GHG reduction goal (80% reduction from 1990 GHG emissions by 2050) included in various Executive Orders from California Governors.

37. The best available data on the actual GHG reductions that will be achieved by the Scoping Plan's GHG Housing Measures is the "Right Type, Right Place" report, prepared by a multi-disciplinary team of housing and environmental law experts at the University of California, Berkeley, that examined some of the consequences from the housing crisis solution embedded in the 2017 Scoping Plan's GHG Housing Measures ("UCB Study").[42]

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[40] Jonathan Woetzel et al., Closing California's Housing Gap, McKinsey Global Institute (Oct. 2016), https://www.mckinsey.com/global-themes/urbanization/closing-californias-housing-gap.

[41] Liam Dillon, *We asked the candidates how they planned to meet housing production goals. Here's how they responded*, LA Times (March 6, 2018), http://www.latimes.com/politics/essential/la-pol-ca-essential-politics-updates-we-asked-the-candidates-how-they-planned-1520382029-htmlstory.html.

[42] Nathaniel Decker et al., Right Type Right Place: Assessing the Environmental and Economic Impacts of Infill Residential Development through 2030, U.C. Berkeley Terner Center for Housing Innovation and Center for Law, Energy and the Environment (Mar. 2017), https://ternercenter.berkeley.edu/right-type-right-place.

38. The UCB Study anticipates constructing only 1.9 million new homes, less than two-thirds of California's 3.5 million shortfall identified by other experts. The Study examines the continuation of existing housing production, which is dominated by single family homes with fewer than 1% of Californians living in high rise structures, and compares this with a changed housing pattern that would confine new housing to the boundaries of existing cities and towns and replace traditional single family homes with smaller apartments or condos (thereby equating 2,000 square foot homes with 800 square foot apartments).

39. The UCB Study concludes that high rise and even mid-rise (e.g., six story) buildings are far more costly to build on a per unit basis than single family homes—three to five time higher—and are thus infeasible in most markets for most Californians. The Study thus recommends focusing on less costly housing units such as quadplexes (four units in two-story buildings) and stacked flats (one or two units per floor, generally limited to four stories)—which are still approximately 30% more costly than single family homes on a per unit basis.

40. The UCB Study then concludes that it would be possible for California to build all 1.9 million new homes in existing communities with these small multi-family structures, but to confine all new units to the 4% of California that is already urbanized would require the demolition of "tens, if not hundreds of thousands, of single family homes." The Study does not quantify the GHG emissions from such massive demolition activities, nor does it identify any funding source or assess any non-GHG environmental, public service, infrastructure, historic structure, school, traffic, or other impact associated with this new housing vision.

41. Unlike CARB's 2017 Scoping Plan, the UCB Study does quantify the GHG reductions to be achieved by remaking California's existing communities and housing all Californians harmed by the current housing crisis in small apartments. With this new housing future, California will reduce annual GHG emissions by 1.79 million metric tons per year, less than 1% of the 181.8 million metric tons required to meet the 2030 Target in SB 32.

42. The Scoping Plan's new CEQA provisions, which have already been cited as CEQA legal mandates by opponents to a Los Angeles County housing project called

"Northlake,"[43] would increase still further the cost of new housing (and thereby make it even less affordable to California's minority and other families). Since new housing—especially infill housing—is already the top target of CEQA lawsuits statewide, [44] the GHG Housing Measures will encourage even more anti-housing lawsuits, with attendant increases in project litigation costs and construction delays, as well as vehement opposition from existing residents.

43. CEQA lawsuits also disproportionately target multi-family housing such as apartments in existing urbanized "infill" locations. In a recent 3-year study of all CEQA lawsuits filed statewide, the approximately 14,000 housing units challenged in the six county region comprising the Southern California Association of Governments ("SCAG"), which includes Los Angeles, Orange, San Bernadino, Ventura, Imperial, and Riverside counties and all cities within those counties, SCAG determined that 98% of the challenged housing units were located in existing urbanized areas, 70% were within areas designated for transit-oriented high density development, and 78% were located in the whiter, wealthier and healthier areas of the region (outside the portions of the regions with higher minority populations, poverty rates, pollution, and health problems associated with adverse environmental conditions such as asthma).[45]

44. CEQA lawsuit petitioners also have an unusually high success rate against the cities and other government agencies responsible for CEQA compliance. A metastudy of administrative agency challenges nationally showed that agencies win approximately 70% of such cases. In contrast, three different law firm studies of CEQA reported appellate court opinions showed that CEQA petitioners prevailed in almost 50% of such cases.[46]

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[43] Center for Biological Diversity, Letter to Los Angeles County (April 16, 2018), http://planning.lacounty.gov/assets/upl/case/tr073336_correspondence-20180418.pdf.

[44] Jennifer L. Hernandez, California Environmental Quality Act Lawsuits and California's Housing Crisis, 24 Hastings Envtl. L.J. (2018), https://www.hklaw.com/files/Uploads/Documents/Articles/121317_HELJ_Jennifer_Hernandez.pdf.

[45] Jennifer Hernandez, David Friedman, Stephanie DeHerrera, In the Name of the Environment Update: CEQA Litigation Update for SCAG Region (2013-2015) (Jul. 2016), p. 31-34, https://www.hklaw.com/files/UPloads/Documents/Alerts/Environment/InfillHousingCEQALawsuits.pdf.

[46] Jennifer Hernandez, Spencer Potter, Dan Golub, Joanna Meldrum, CEQA Judicial Outcomes: Fifteen Years of Reported California Appellate and Supreme Court Decisions (2015), p. 3-4, 10, https://www.hklaw.com/files/Uploads/Documents/Articles/0504FINALCEQA.pdf.

45. As noted by senior CEQA practitioner William Fulton, "CEQA provides a way for anybody who wants anything out of a public agency to get some leverage over the situation – whether that's unions, environmentalists, businesses, developers, and even local governments themselves."[47]

46. As the founder of California's first law firm focused on filing CEQA lawsuit petitions, E. Clement Shute, recently reported when accepting a lifetime environmental law firm award from the California State Bar Environmental Section:

> Moving to the bad and ugly side of CEQA, projects with merit that serve valid public purposes and not be harmful to the environment can be killed just by the passage of the time it takes to litigate a CEQA case.
>
> In the same vein, often just filing a CEQA lawsuit is the equivalent of an injunction because lenders will not provide funding where there is pending litigation. This is fundamentally unfair. There is no need to show a high probability of success to secure an injunction and no application of a bond requirement to offset damage to the developer should he or she prevail.
>
> CEQA has also been misused by people whose move is not environmental protection but using the law as leverage for other purposes. I have seen this happen where a party argues directly to argue lack of CEQA compliance or where a party funds an unrelated group to carry the fight. These, in my opinion, go to the bad or ugly side of CEQA's impact.[48]

47. African American radio host and MBA, Eric L. Frazier, called this climate-based CEQA housing regime "environmental apartheid" since whiter, wealthier and older homeowners were less likely to be affected, while aspiring minority homeowners were likely to be denied housing even longer based on community opposition to widespread density increases and destruction of single family homes, bear even higher housing costs given the absence of funding

[47] William Fulton, Insight: Everyone wants to keep leverage under CEQA, California Planning & Development Report (Sept. 30, 2014), http://www.cp-dr.com/node/3585.

[48] E. Clement Shute, Jr., Reprise of Fireside Chat, Yosemite Environmental Law Conference, 25 Envtl Law News, 3 (2016).

sources to expand and replace undersized infrastructure and public services, and never be within reach of purchasing a family home.[49]

48. CARB's 2017 Scoping Plan, and its required CEQA analysis, also provide no assessment of alternatives for achieving the only 1% reduction in GHG emissions that the new housing future will accomplish from other sectors or sources, which could avoid adverse impacts to California's minority communities, avoid increased housing costs and CEQA litigation risks, and avoid impacting existing California communities by—for example—allowing urbanization of even 1% more of California's land.

49. CARB also ignores a history of success in reducing traditional pollutants from cars, as required by the federal and state Clean Air Acts, while preserving the transportation mobility of people and goods. U.S. Environmental Protection Agency ("EPA") reported in 2016 that most auto tailpipe pollutants had declined by 98-99% in comparison to 1960's cars, gasoline got cleaner with the elimination of lead and reduction in sulfur, and even though it had not been directly regulated, the primary GHG from cars (carbon dioxide) has risen nationally by less than 20% even as VMT nationally more than doubled as a co-benefit of mandatory reductions of traditional pollutants.[50]

50. In contrast to this success, CARB's VMT reduction scheme and its ongoing efforts to intentionally increase congestion are an assault on the transportation mobility of people, which disparately harm minority workers who have been forced by the housing crisis to drive ever greater distances to work.

51. CARB staff's response to The Two Hundred's December 2017 comment letter on the 2017 Scoping Plan is plain evidence of the intentional concealment and willful omission of the true impacts of the 2017 Scoping Plan and the GHG Housing Measures on California. CARB

[49] Eric L. Frazier, The Power is Now, Facebook Live Broadcast (Feb. 28, 2018), https://thepowerisnow.com/events/event/jennifer-hernandez/.

[50] U.S. EPA, Historic Success of the Clean Air Act (2016), https://www.epa.gov/air-pollution-transportation/accomplishments-and-success-air-pollution-transportation.

staff said that GHG Housing Measures were in a separate chapter and thus not part of the 2017 Scoping Plan after all.[51]

52. California's climate change policies, and specifically those policies that increase the cost and delay or reduce the availability of housing, that increase the cost of transportation fuels and intentionally worsen highway congestion to lengthen commute times, and further increase electricity costs, have caused and will cause unconstitutional and unlawful disparate impacts to California's minority populations, which now comprise a plurality of the state's population. These impacts also disproportionately affect younger Californians including millennials (the majority of whom are minorities), as well as workers without college degrees.

53. In short, in the midst of California's unprecedented housing, homeless, poverty and transportation crisis, CARB adopted a 2017 Scoping Plan which imposes still higher housing, transportation and electricity costs on Californians. CARB did so without disclosing or assessing the economic consequences or the significant adverse environmental consequences of its GHG Housing Measures on California residents.

54. In doing so, CARB again affirmed its now-wanton and flagrant pattern of violating CEQA—a pattern consistent with what an appellate court termed "ARB's lack of good faith" in correcting earlier CEQA violations as ordered by the courts.

55. The GHG Housing Measures have a demonstrably disproportionate adverse impact on already-marginalized minority communities and individuals, including but not limited to Petitioners LETICIA RODRIGUEZ, TERESA MURILLO and EUGENIA PEREZ, who are Latina residents of Fresno County that are personally, directly and disproportionately adversely affected by the affordable housing shortage and the future exacerbation of that shortage if the GHG Housing Measures are allowed to remain in effect.

56. The Legislature has recognized the equal right to access to housing, *inter alia*, in the California Fair Employment and Housing Act (Gov. Code § 12900 *et seq.*) ("FEHA"). FEHA

[51] Supplemental Responses to Comments on the Environmental Analysis Prepared for the Proposed Strategy for Achieving California's 2030 Greenhouse Gas Target (Dec. 14, 2017), p. 14-16, https://www.arb.ca.gov/cc/scopingplan/final-supplemental-rtc.pdf.

§ 12921(b) provides that: "The opportunity to seek, obtain, and hold housing without discrimination because of race, color, . . . source of income . . . or any other basis prohibited by Section 51 of the Civil Code is hereby recognized and declared to be a civil right."

57. California's housing crisis is particularly acute, and has long-lasting adverse impacts. As the Director of the California Department of Housing and Community Development, Ben Metcalf, recently reported: "Research has been unequivocal in supporting two undeniable conclusions: Low-income households paying more than half their income in rent have profoundly reduced expenditures on food, retirement, health care, and education compared with non–rent-burdened households. And children growing up in neighborhoods of concentrated poverty are more likely to have psychological distress and health problems."[52]

58. The 2017 Scoping Plan is also violative of the due process and equal protection clauses of the California and U.S. Constitutions (Cal. Const. Art. I, § 7, U.S. Const., Amd. 14, § 1). Accordingly, Petitioners in this action seek declaratory and injunctive relief from these violations pursuant to 42 U.S.C. § 1983. The GHG Housing Measures are thus unconstitutional on their face and as applied to Petitioners.

59. While the unlawful and unconstitutional disparate impact of the GHG Housing Measures on minority communities, including Petitioners, is the most egregious feature of the regulations, there are numerous other flaws, *each* of which is fatal to the 2017 Scoping Plan and the GHG Housing Measures. As detailed herein, these include violations of CEQA, the APA, the GWSA, the California Health and Safety Code, including the California Clean Air Act (H&S Code § 39607 *et seq.*) ("CCAA"), and the California Congestion Management Act (Gov. Code § 65088 *et seq.*). Moreover, CARB has acted in excess of its statutory authority (ultra vires).

60. The GHG Housing Measures are unlawful both procedurally (because they were adopted in violation of numerous statutory requirements, including but not limited to CEQA) and substantively (because they frustrate and violate a wide range of state and federal laws and regulations prohibiting housing regulations that have an unjustified discriminatory effect).

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[52] Donna Kimura, Pop Quiz with Ben Metcalf, Affordable Housing Finance (July 8, 2016), http://www.housingfinance.com/news/pop-quiz-with-ben-metcalf_o.

61. California's commitment to climate leadership does not require or allow CARB to violate the civil rights of California's minority communities, or constitutional and statutory mandates for clean air, fair housing, historic preservation, consumer protection, transportation mobility, CEQA, or administrative rulemaking.

62. With climate change repeatedly described as a "catastrophe" that could destroy civilizations, perhaps it is necessary for CARB to plunge more of California's minority residents into poverty and homelessness. If so—if climate change requires that the state ignore civil rights, federal and state clean air, fair housing, transportation and consumer protection mandates, and ignore the administrative law checks and balances that require a thorough environmental and economic assessment of regulatory proposals—then this is a conclusion that may only be implemented by the Legislature, to the extent it can do so consistent with the California and federal Constitutions.

63. For this reason, this action seeks declaratory and injunctive relief setting aside the four GHG Housing Measures, each of which places a disproportionate burden on California's minority community members, including Petitioners, and for the court to direct CARB to complete a thorough economic and environmental analysis prior to adopting any new regulations or taking other actions to implement the 2017 Scoping Plan, and to return to this court with a revised Scoping Plan that complies with state and federal law.

II. JURISDICTION AND VENUE

64. This Court has jurisdiction over this proceeding pursuant to California Code of Civil Procedure ("CCP") §§ 410.10, 1085, 1094.5, 526, *et seq.* and 1060. Defendants are subject to personal jurisdiction because their new GHG Housing Measures would, if allowed to remain in effect, pertain to Petitioners and others located within the County of Fresno. Defendants may be properly be served here, and jurisdiction and venue are proper here under CCP § 401, because Defendants are being sued in their official capacities as members of an agency of the State of California, and the Attorney General maintains an office in Fresno, California and the GHG regulations complained of herein have an effect in, and apply in, the County of Fresno, California.

III. PARTIES

65. Petitioners/Plaintiffs THE TWO HUNDRED are a California-based unincorporated association of community leaders, opinion makers and advocates working in California (including in Fresno County) and elsewhere on behalf of low income minorities who are, and have been, affected by California's housing crisis and increasing wealth gap.[53]

66. The Two Hundred is committed to increasing the supply of housing, to reducing the cost of housing to levels that are affordable to California's hard working families, and to restoring and enhancing home ownership by minorities so that minority communities can also benefit from the family stability, enhanced educational attainment over multiple generations, and improved family and individual health outcomes, that white homeowners have long taken for granted. The Two Hundred includes civil rights advocates who each have four or more decades of experience in protecting the civil rights of our communities against unlawful conduct by government agencies as well as businesses.

67. The Two Hundred supports the quality of the California environment, and the need to protect and improve public health in our communities.

68. The Two Hundred have for many decades watched with dismay decisions by government bureaucrats that discriminate against and disproportionately harm minority communities. The Two Hundred have battled against this discrimination for entire careers, which for some members means working to combat discrimination for more than 50 years. In litigation and political action, The Two Hundred have worked to force two government bureaucrats to reform policies and programs that included blatant racial discrimination—by for example denying minority veterans college and home loans and benefits that were available to white veterans, and promoting housing segregation as well as preferentially demolishing homes in minority communities.

69. The Two Hundred sued and lobbied and legislated to force federal and state agencies to end redlining practices that denied loans and insurance to aspiring minority home

[53] See www.the200leaders.org.

buyers and small businesses. The Two Hundred sued and lobbied to force regulators and private companies to recognize their own civil rights violations, and end discriminatory services and practices, in the banking, telecommunication, electricity, and insurance industries.

70. The Two Hundred have learned, the hard way, that California's purportedly liberal, progressive environmental regulators and environmental advocacy group lobbyists are as oblivious to the needs of minority communities, and are as supportive of ongoing racial discrimination in their policies and practices, as many of their banking, utility and insurance bureaucratic peers.

71. Several years ago, The Two Hundred waged a three year battle in Sacramento to successfully overcome state environmental agency and environmental advocacy group opposition to establishing clear rules for the cleanup of the polluted properties in communities of The Two Hundred, and experienced first-hand the harm caused to those communities by the relationships between regulators and environmentalists who financially benefited from cleanup delays and disputes instead of creating the clear, understandable, financeable, insurable, and equitable rules for the cleanup and redevelopment of the polluted properties that blighted these communities.

72. THE TWO HUNDRED's members include, but are not limited to, members of and advocates for minority communities in California, including the following:

- Joe Coto- Joe Coto is Chair of THE TWO HUNDRED. Mr. Coto is an American educator, city council member, and Democratic politician. From 2004-2010, he was a member of the California State Assembly, representing the 23rd Assembly District. He served as Chair of the Assembly's Insurance committee, and held positions on the Elections and Redistricting, Governmental Organization, and Revenue and Taxation committees. He also served on the Special committee on Urban Education. Coto served as Chair of the 26 member Latino Legislative Caucus for a 2-year term, and as Vice Chair for a 2-year term..
- John Gamboa – John Gamboa is Vice-Chair of THE TWO HUNDRED. Mr. Gamboa is the former Executive Director of the Greenlining Institute and has experience in academia, the private sector and the non-profit sector. Prior to the

Greenlining Institute, he was Executive Director of Latino Issues Forum, Communications Manager at U.C. Berkeley, Executive Director of Project Participar, a citizenship program, and Marketing and Advertising Manager at Pacific Bell. At the Greenlining Institute, Mr. Gamboa focuses on public policy issues that promote economic development in urban and low-income areas, and in developing future leaders within the country's minority youth. He has been active in combating redlining and in providing a voice for the poor and underserved in insurance, philanthropy, banking, housing, energy, higher education and telecommunications. He has served on numerous boards and commissions.

- Cruz Reynoso – Cruz Reynoso, now retired, formerly served as Legal Counsel for THE TWO HUNDRED. Mr. Reynoso has dedicated his life to public service championing civil rights, immigration and refugee policy, government reform, and legal services for the poor. Mr. Reynoso began his career in private practice then moved to public service as the assistant director of the California Fair Employment Practices Commission, the associate general counsel of the Equal Employment Opportunity Commission, and head of the California Rural Legal Assistance (CRLA). Mr. Reynoso was a faculty member at the University of New Mexico School of Law and in 1976, he was appointed associate justice of the California Courts of Appeal. In 1982, he became the first Latino to be appointed an associate justice of the California Supreme Court. Mr. Reynoso later returned to private practice, and resumed his teaching career by joining the UCLA School of Law and then the UC Davis School of Law. Mr. Reynoso has served as Vice Chair of the U.S. Commission on Civil Rights, was a member of the Select Commission on Immigration and Human Rights, and received the Presidential Medal of Freedom.
- José Antonio Ramirez – José Antonio Ramirez is a Council Member of THE TWO HUNDRED. He has dedicated his life to public service, especially for the residents

of the Central Valley, seeking to improve economic vitality, strengthen community life, and increase educational opportunities and housing affordability for all Californians, including disadvantaged members of the Latino community. He currently serves as President of Community Development Inc. and as City Manager for the City of Livingston. He was previously Program Manager, International Affairs Coordinator and Security Engineer and Emergency Management Coordinator for the U.S. Bureau of Reclamation. He served on the San Joaquin River Resource Management board, the Valley Water Alliance Board and as Chairman of the Technical Review Boards for Merced and Fresno County.

- Herman Gallegos – Herman Gallegos is a Council Member of THE TWO HUNDRED. He has provided active leadership in a wide variety of community, corporate and philanthropic affairs spanning local, national and international interests. As a pioneer civil rights activist in the early 1950s, Gallegos was a leader in the formation of the Community Service Organization, a civil rights-advocacy group organized to promote the empowerment and well-being of Latinos in California. In 1965, while serving as a Consultant to the Ford Foundation's National Affairs Program, Gallegos, with Dr. Julian Samora and Dr. Ernesto Galarza, made an assessment with recommendations on how the foundation might initiate support to address the critical needs of the rapidly growing Latino population in the U.S.. As a result, he was asked to organize a new conduit for such funds—the Southwest Council of La Raza, now the National Council of La Raza. Gallegos went on to become the council's founding executive director. Gallegos also served as CEO of several business firms, including the U. S. Human Resources Corporation and Gallegos Institutional Investors Corporation. He became one of the first Latinos elected to the boards of publicly traded corporations and the boards of preeminent private and publicly supported philanthropic organizations, such as the Rockefeller Foundation, The San Francisco Foundation, The Poverello Fund and the California Endowment.

- Hyepin Im – Hyepin Im is a Council Member of THE TWO HUNDRED. She currently serves as the Founder and President of Korean Churches for Community Development (KCCD) whose mission is to help churches build capacity to do economic development work. Under Ms. Im's leadership, KCCD has implemented a historic homeownership fair in the Korean community, a Home Buyer Center Initiative with Freddie Mac, a national database and research study on Korean American churches, and ongoing training programs. Previously, Ms. Im was a venture capitalist for Renaissance Capital Partners, Sponsorship and Community Gifts Manager for California Science Center, a Vice President with GTA Consulting Company, and a Consultant and Auditor with Ernst & Young LLP. Ms. Im serves on the Steering Committee of Churches United for Economic Development, as Chair for the Asian Faith Commission for Assemblymember Herb Wesson, and has served as the President of the Korean American Coalition, is a member of the Pacific Council, was selected to be a German Marshall Fund American Memorial Marshall Fellow, and most recently, was selected to take part in the Harvard Divinity School Summer Leadership Institute.
- Don Perata – Don Perata is a Council Member of THE TWO HUNDRED. Mr. Perata began his career in public service as a schoolteacher. He went on to serve on the Alameda County Board of Supervisors (1986-1994) and the California State Assembly (1996-1998). In 1998, he was elected to the California State Senate and served as president pro tem of the Senate from 2004-2008. As president pro tem, Mr. Perata oversaw the passage of AB 32, California's cap and trade regulatory scheme to reduce greenhouse gases. Mr. Perata has guided major legislation in health care, in-home services, water development and conservation and cancer, biomedical and renewable energy. Mr. Perata has broad experience in water, infrastructure, energy, and environmental policies, both as an elected official and a consultant. He is versed in the State Water Project, Bay Delta restoration,

renewable energy, imported water and water transfers, recycling, conservation, groundwater regulation, local initiative, storage and desalination.

- Steven Figueroa – Steven Figueroa is a Council Member of THE TWO HUNDRED. He was born in East L. A., with a long history in California. Working on his first political campaign at age nine he learned that if you want change you have to be involved. As an adult he was involved in the labor movement through the California School Employees Association and later as a union shop steward at the U.S.P.S. A father of three, Steven has been advocating for children with disabilities for 30 years, beginning in 1985, for his own son, who is autistic. He took the Hesperia School District to court for violating his disabled son's rights and prevailed. He advocates for disabled children throughout the United States, focusing on California. Currently, he serves as president of the Inland Empire Latino Coalition and sits on the advisory boards of California Hispanic Chambers of Commerce, the National Latina Business Women Association Inland Empire the Disability Rights and Legal Center Inland Empire, and as Executive Director for Latin PBS. He previously served as the vice president of the Mexican American Political Association Voter Registration & Education Corp.
- Sunne Wright McPeak – Sunne McPeak is a Council Member of THE TWO HUNDRED. She is the President and CEO of the California Emerging Technology Fund, a statewide non-profit whose mission is to close the Digital Divide by accelerating the deployment and adoption of broadband. She previously served for three years as Secretary of the California Business, Transportation and Housing Agency where she oversaw the largest state Agency and was responsible for more than 42,000 employees and a budget in excess of $11 billion. Prior to that she served for seven years as President and CEO of the Bay Area Council, as the President and CEO of the Bay Area Economic Forum, and for fifteen years as a member of the Contra Costa County Board of Supervisors. She has led numerous statewide initiatives on a variety of issues ranging from water, to housing, to child

care, and served as President of the California State Association of Counties in 1984. She was named by the San Francisco League of Women Voters as "A Woman Who Could Be President." She also served on the Boards of Directors of First Nationwide Bank and Simpson Manufacturing Company.

- George Dean – George Dean is a Council Member of THE TWO HUNDRED. Mr. Dean has been President and Chief Executive Officer of the Greater Phoenix Urban League since 1992. As such, he has brought a troubled affiliate back to community visibility, responsiveness and sound fiscal accountability. Mr. Dean, a former CEO of the Sacramento, California and Omaha, Nebraska affiliates boasts more than 25 years as an Urban League staff member. His leadership focuses on advocacy toward issues affecting the African-American and minority community, education, training, job placement and economic development. Mr. Dean annually raises more than 3 million dollars from major corporations, local municipalities and state agencies for the advancement of minority enterprises, individuals, families and non-profits. Mr. Dean is nationally recognized in the field of minority issues and advancement, and affordable housing.
- Joey Quinto – Joey Quinto is a Council Member of THE TWO HUNDRED. Mr. Quinto's has made many contributions to the advancement of the API community. He began his professional career as a mortgage banker. As a publisher, his weekly newspaper advances the interests of the API community and addresses local, consumer and business news, and community events. He is a member of several organizations including the Los Angeles Minority Business Opportunity Committee and The Greenlining Coalition. Mr. Quinto is the recipient of the Award for Excellence in Journalism during the Fourth Annual Asian Pacific Islander Heritage Awards in celebration of the Asian Pacific Islander American Heritage Month. He was also listed among the Star Suppliers of the Year of the Southern California Regional Purchasing Council, received the Minority Media

Award from the U.S. Small Business Administration, and earned a leadership award from the Filipino American Chamber of Commerce based in Los Angeles.

- Bruce Quan, Jr. – Bruce Quan is a Council Member of THE TWO HUNDRED. Mr. Quan is a fifth generation Californian whose great grandfather, Lew Hing founded the Pacific Coast Canning Company in West Oakland in 1905, then one of the largest employers in Oakland. Bruce attended Oakland schools, UC Berkeley, and Boalt Hall School of Law. At Berkeley, he was a community activist for social justice, participated in the Free Speech Movement and the Vietnam Day Committee and was elected student body president. In 1973, he was chosen as one of three students to clerk for the Senate Watergate Committee and later returned to Washington to draft the "Cover-up" and "Break-in" sections of the committee's final report. He worked in the Alameda's City Attorney office, his own law practice advising Oakland's Mayor Lionel Wilson on economic development issues in Chinatown and serving Mayor Art Agnos as General Counsel for the San Francisco-Shanghai Sister City Committee and the San Francisco-Taipei Sister City Committee. In 2000, he moved to Beijing, continued his law practice, worked as a professor with Peking Law School, and became senior of counsel with Allbright Law Offices. Now in Oakland, he has reengaged in issues affecting the Chinese community and on issues of social justice, public safety and economic development in Oakland.
- Robert J. Apodaca – Robert Apodaca is a Council Member of THE TWO HUNDRED. He is a Founder of ZeZeN Advisors, Inc., a boutique financial services firm that connects institutional capital with developers and real estate owners. He has a 45-year career that spans private and public sectors. He was Chairman and Trustee of Alameda County Retirement Board (pension fund) and then joined Kennedy Associates, an institutional investor for pension funds as Senior Vice President & Partner. He represented Kennedy Companies on Barings Private Equity's "Mexico Fund" board of directors. He later joined McLarand

Vasquez Emsiek & Partners, a leading international architectural and planning firm, as Senior Vice President of Business Development. He currently serves on numerous board of directors including Jobs and Housing Coalition, Greenlining Institute, California Community Builders and California Infill Federation.

- Ortensia Lopez – Ortensia Lopez is a Council Member of THE TWO HUNDRED. She is a nationally recognized leader in creating coalitions, collaboratives and partnerships, resulting in innovative initiatives that ensure participation for low-income communities. Ms. Lopez has worked in the non-profit sector for over forty-one years in executive management positions. She is the second of 11 children born to parents from Mexico and the first to graduate from college. She currently serves on the California Public Utilities Commission's Low-Income Oversight Board, as Co-Chairperson and founding member of the Greenlining Institute, as Vice-President Chicana/Latina Foundation, as Director of Comerica Advisory Board, and on PG&E's Community Renewables Program Advisory Group. Ms. Lopez has earned numerous awards, including Hispanic Magazine's "Hispanic Achievement Award", San Francisco's "ADELITA Award", the prestigious "Simon Bolivar Leadership Award", the League of Women Voters of San Francisco "Woman Who Could Be President" award, California Latino Civil Rights Network award, and the Greenlining Lifetime Achievement.
- Frank Williams – Frank Williams is a Council Member of THE TWO HUNDRED. He is an established leader in the mortgage banking industry, with over 25 years of experience, and is an unwavering advocate for creating wealth through homeownership for underrepresented communities. Frank began his real estate finance career in 1990, emphasizing Wholesale Mortgage Banking. He founded Capital Direct Funding, Inc. in 2009. Today, as Co-founder and Divisional Manager, Mr. Williams has made Capital Direct Funding into California's premier private lending firm. Capital Direct Funding's foundations are built on giving back to the community by supporting several non-profits. He

currently serves as President of East LA Classic Theater, a non-profit that works with underserved school districts in California. Frank was also Past President for Los Angeles' National Association of Hispanic Real Estate Professionals.

- Leticia Rodriguez - Leticia Rodriguez is a resident of Fresno County, California. She is a low-income single mother and Latina who suffers ongoing personal harm from the severe shortage of housing that is affordable to working-class families. Within the last three years, she has spent more than 30% of her income on rent. She has been forced to move into her parents' home because she cannot afford a decent apartment for herself and her family.
- Teresa Murillo – Teresa Murillo is a resident of the City of Parlier in Fresno County, California. She is a young Latina with a low income. In recent years, she has spent approximately 30% of her income on housing. She currently is unable to afford a decent apartment and has been forced to move back in with her parents.
- Eugenia Perez – Eugenia Perez is a resident of Fresno County, California. She is a Latina grandmother. The majority of her income goes to pay rent. She currently is renting a room on E. Fremont Avenue in Fresno. She struggles to pay rent and lives in fear of becoming homeless if housing prices and rent continue to increase.

73. Defendant CALIFORNIA AIR RESOURCES BOARD is an agency of the State of California. On information and belief, current members of the CALIFORNIA AIR RESOURCES BOARD are: Mary D. Nichols, Sandra Berg, John R. Balmes, Hector De La Torre, John Eisenhut, Dean Flores, Eduardo Garcia, John Gioia, Ricardo Lara, Judy Mitchell, Barbara Riordan, Ron Roberts, Phil Serna, Alexander Sherriffs, Daniel Sperling, and Diane Takvorian.

74. Defendant RICHARD COREY, sued herein in his official capacity, is Executive Officer of the CALIFORNIA AIR RESOURCES BOARD.

75. Petitioners are ignorant of the true names or capacities of the defendants sued herein under the fictitious names DOES 1 through 20 inclusive. When their true names and capacities are ascertained, Petitioners will amend this Petition/Complaint to show such true names and capacities. Petitioners are informed and believe, and thereon allege, that DOES 1 through 20,

inclusive, and each of them, are agents or employees of one or more of the named Defendants responsible, in one way or another, for the promulgation and prospective enforcement of the GHG Housing Measures sought to be invalidated and set aside herein.

IV. GENERAL ALLEGATIONS

A. California's Statutory Scheme To Reduce Greenhouse Gas Emissions and Avoid Disparate Impacts

76. As part of developing solutions to global warming, the California Legislature adopted the California Global Warming Solutions Act of 2006 (otherwise known as "AB 32" or the "GWSA") and established the first comprehensive greenhouse gas regulatory program in the United States. H&S Code § 38500 *et seq.*

77. Under AB 32, CARB is the state agency charged with regulating and reducing the sources of emissions of GHGs that cause global warming. H&S Code § 38510.

78. AB 32 required CARB to set a statewide GHG emissions limit equivalent to California's 1990 GHG emissions to be achieved by 2020. H&S Code § 38550.

79. AB 32 also required CARB to prepare, approve, and periodically update a scoping plan detailing how it would achieve the maximum technologically feasible and cost-effective GHG emissions reductions by 2020. H&S Code § 38561(a). The scoping plan is required to identify and make recommendations on direct emissions reductions measures, alternative compliance mechanisms, market-based compliance mechanisms, and potential monetary and nonmonetary incentives for sources to achieve reductions of GHGs by 2020. H&S Code § 38561(b). The scoping plan must be updated at least every five years. H&S Code § 38561(h).

80. In adopting a scoping plan, CARB must evaluate the total potential costs and total potential benefits of the plan to California's economy, environment, and public health. H&S Code § 38561(d).

81. Each scoping plan update also must identify, for each emissions reduction measure, the range of projected GHG emissions reductions that result from the measure, the range of projected air pollution reductions that result from the measure, and the cost-effectiveness, including avoided social costs, of the measure. H&S Code § 38562.7.

82. The initial scoping plan[54] was discussed in public hearings on or about December 11, 2008. The initial scoping plan was adopted by CARB on or about May 7, 2009.

83. On or about December 23, 2009, the initial scoping plan was challenged in the Superior Court for the City and County of San Francisco for failing to meet the statutory requirements of AB 32, the APA, and CEQA. The superior court accepted the challenge in part and the appeal was thereafter resolved after a further environmental document was filed.[55]

84. The Low Carbon Fuel Standard ("LCFS") was an early action item under AB 32. The LCFS was adopted on or about November 25, 2009 by CARB's executive officer. CARB's action to adopt the LCFS also was challenged for CEQA and APA violations. On or about November 2011, the Superior Court of Fresno County found that CARB had not violated the APA or CEQA. On or about July 15, 2013 the Fifth District Court of Appeal reversed the superior court's judgment and ordered it to issue a preemptory writ of mandate ordering CARB to revise and recertify its environmental assessment to meet CEQA's standards.[56]

85. The first update to the scoping plan[57] was adopted on or about May 22, 2014.

86. Thereafter, on or about May 30, 2017, the Fifth District Court of Appeal again found that CARB had violated CEQA and the APA, and that it had not acted in good faith in responding to certain of the Court's prior orders.[58] Specifically, the court found that CARB violated CEQA in deferring its analysis and mitigation of potential increases in nitrogen oxide emissions resulting from impacts of the LCFS regulations.

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[54] California Air Resources Board, Climate Change Scoping Plan (Dec. 2008), https://www.arb.ca.gov/cc/scopingplan/document/adopted_scoping_plan.pdf.

[55] *Ass'n. of Irritated Residents v. Cal. Air Res. Bd.*, 2011 WL 8897315 (Cal. Super. May 20, 2011) (approving challenges to alternatives analysis and improper "pre-approval" under CEQA) and *Ass'n. of Irritated Residents v. Cal. Air Res. Bd.* (2012) 206 Cal.App.4th 1487.

[56] *POET, LLC v. California Air Resources Board* (2013) 217 Cal.App.4th 1214 (holding that CARB prematurely approved the LCFS and improperly deferred analysis and mitigation of potential NOx emissions increased by the rule).

[57] California Air Resources Board, First Update to the Climate Change Scoping Plan (May 2014), https://www.arb.ca.gov/cc/scopingplan/2013_update/first_update_climate_change_scoping_plan.pdf.

[58] *POET, LLC v. State Air Resources Board* (2017) 12 Cal.App. 5th 52.

87. In 2016, the California Legislature adopted SB 32, which required CARB to ensure that rules and regulations adopted pursuant to the GWSA would target California's GHG emissions for reductions of 40% below 1990 levels by 2030. H&S Code § 38566.

88. AB 32 requires CARB to update the scoping plan at least every five years. CARB superseded its 2014 Scoping Plan with the current 2017 Scoping Plan adopted on December 14, 2017. The 2017 Scoping Plan contains the new GHG Housing Measures complained of herein.[59]

89. Between December, 2017 and mid-April, 2018, Petitioners, through counsel, sought to persuade CARB to eliminate or materially modify the four new GHG Housing Measures complained of herein, without success. During this time, the parties entered into a series of written tolling agreements that were continuously operative until April 30, 2018.

B. The 2017 Scoping Plan

90. Throughout 2016 and 2017, CARB prepared the 2017 Scoping Plan. CARB held meetings on or about January 27, 2017, February 16-17, 2017 and December 14, 2017 to accept public comment on the proposed 2017 Scoping Plan.

91. Because the Scoping Plan is both sweeping and vague, and because it was not preceded by a notice of proposed rulemaking, Petitioners THE TWO HUNDRED, *et al.* did not initially appreciate the significance of the new GHG regulations and standards embedded in the 2017 Scoping Plan by CARB staff.

92. Petitioners submitted a detailed letter commenting on the 2017 Scoping Plan on December 11, 2017, in advance of CARB's meeting to vote on the 2017 Scoping Plan.[60] The letter included extensive citations to documents and publications analyzing California's ongoing housing crisis and the disproportionate impact of the worsening housing shortage on marginalized minority communities.

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[59] California Air Resources Board, The 2017 Climate Change Scoping Plan Update (Jan. 20, 2017), https://www.arb.ca.gov/cc/scopingplan/2030sp_pp_final.pdf.

[60] The Two Hundred Comment Letter dated Dec. 11, 2017, can be found in the Supplemental Responses to Comments on the Environmental Analysis Prepared for the Proposed Strategy for Achieving California's 2030 Greenhouse Gas Target (Dec. 14, 2017), p. 74, https://www.arb.ca.gov/cc/scopingplan/final-supplemental-rtc.pdf

93. On December 14, 2017, CARB adopted the 2017 Scoping Plan.

94. While the 2017 Scoping Plan is replete with protestations to the effect that it is only providing "guidance" rather than a "directive or mandate to local governments" (see, e.g., Scoping Plan, p. 99), it is plain that CARB's pronouncements on the GHG Housing Measures, by their nature, will be given the force and effect of law. Numerous courts have stated that when an agency has specific expertise in an area and/or acts as lead or responsible agency under CEQA, and publishes guidance, that guidance must be taken into consideration and will be given heavy weight.

95. In *California Building Industry Assn. v. Bay Area Air Quality Mgmt. Dist.* (2016) 2 Cal.App.5th 1067, 1088, the court rejected the notion that the District's CEQA guidelines were a nonbinding, advisory document. The court stated that the guidelines suggested a routine analysis of air quality in CEQA review and were promulgated by an air district that acts as either lead or responsible agency on projects within its jurisdictional boundaries.

96. In addition, in *Center for Biological Diversity v. Cal. Dept. of Fish and Wildlife* (2015) 62 Cal.4th 204, 229, the court recognized the value of "performance based standards" as CEQA thresholds, as outlined in the Scoping Plan or other authoritative body of regulations.

97. Further, in *Cleveland Nat. Forest Foundation, et al v. San Diego Assoc. of Governments* (2017) 3 Cal.5th 497, 515, the court held that even though the 2050 Executive Order was not an adopted GHG reduction plan and there was no legal requirement to use it as a threshold of significance, that was not dispositive of the issue. Although lead agencies have discretion in designing an Environmental Impact Report ("EIR") under CEQA, the court stated that the exercise of that discretion must be "based to the extent possible on scientific and factual data" and thus the scientific basis for the Executive Order's and CARB's emission reduction goals must be considered in a CEQA analysis.

98. Thus, because CEQA documents must take a long term view of GHG compliance and because of the deference and weight other agencies are required to give to CARB guidance, the measures alleged to be "guidance" are in reality self-implementing regulations having an immediate "as applied" effect.

99. The LAO also has recognized that CARB's Scoping Plans include "a wide variety of regulations intended to help the state meet its GHG goal…"[61]

C. CARB's Improper "Cumulative Gap" Reduction Requirement

100. In AB 32, the Legislature directed CARB to reduce statewide GHG emissions to 1990 levels by 2020 via measures in the first Scoping Plan. This legislative mandate is simple and uncontested. CARB concluded that California's GHG emissions were 431 million metric tons of carbon dioxide equivalent ("$MMTCO_2e$") in 1990.

101. SB 32 established the more stringent mandate of reducing GHG emissions to 40% below 1990 levels by 2030, even though California's population and economic activities are expected to continue to increase during this period. The 2030 Target is simple math: 40% below 431 $MMTCO_2e$ equals 258.6 $MMTCO_2e$.[62] Thus, the 2017 Scoping Plan created measures to reduce statewide emissions to 260 MMTCO2e by 2030.

102. The 2017 Scoping Plan first evaluates the "Reference Scenario", which is the emissions expected in 2030 by continuing "Business as Usual" and considering existing legal mandates to reduce GHG emissions that have been implemented, but without adopting any new GHG reduction measures. The Scoping Plan concludes that in this scenario California's GHG .emissions will fall to 389 MMTCO2e by 2030.

103. Because numerous GHG reduction mandates are being phased in over time, CARB also evaluated a "Known Commitments Scenario" (which CARB confusingly named the "Scoping Plan Scenario") which estimates GHG emissions in 2030 based on compliance with all legally required GHG reduction measures, including those that have not yet been fully implemented. Under the "Known Commitments Scenario" the 2017 Scoping Plan concludes that California's GHG emissions will fall to 320 MMTCO2e by 2030.

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[61] LAO, Cap-and-Trade Revenues: Strategies to Promote Legislative Priorities (Jan. 21, 2016), http://www.lao.ca.gov/reports/2016/3328/cap-trade-revenues-012116.pdf, at p. 5-6.

[62] CARB generally rounds this to 260 MMTCO2e.

104. Given that SB 32 required a reduction to 260 MMTCO2e, this left a gap of 60 MMTCO2e for which CARB was required to identify measures in the 2017 Scoping Plan in the "Known Commitments Scenario" and 129 MMTCO2e in the "Reference Scenario".

105. CARB declined to comply with this legislated mandate, and instead invented a different "cumulative gap" reduction requirement which requires far more GHG emission reductions.

106. Neither the Scoping Plan nor any of its appendices explain how this "cumulative gap" reduction requirement was derived, and the methodology and assumptions CARB used can only be located in one of several modeling spreadsheets generally referenced in the plan.

107. CARB's unlegislated "cumulative gap" requirement is based on the unsupportable assumption that state emissions must decline in a fixed trajectory from 431 $MMTCO_2e$ in 2020 to 258.6 MMTCO2e in 2030 despite the fact that SB 32 does not require that the state reach the 2030 Target in any specific way. CARB arbitrarily created the "cumulative gap" requirement by summing the annual emissions that would occur from 2021-2030 if emissions declined in a straight line trajectory, which totaled 3,362 MMTCO2e, as follows:

	Annual emissions based on a straight line trajectory from 2020 to 2030 ($MMTCO_2e$)
2020	431.0
2021	413.8
2022	396.5
2023	379.3
2024	362.0
2025	344.8
2026	327.6
2027	310.3
2028	293.1
2029	275.8
2030	258.6
2021-2030 Cumulative Emissions	3,362

108. CARB then summed the annual emissions projected to occur from 2021-2030 under the "Reference Scenario" without the implementation of the measures included in the "Known Commitments Scenario," as 3,982 MMTCO2e.

109. CARB then subtracted the cumulative "Reference Scenario" emissions (3,982 $MMTCO_2e$) from the cumulative emissions based on the straight line trajectory (3,362 $MMTCO_2e$) and illegally used the difference, 621 $MMTCO_2e$, as a new, unlegislated GHG "cumulative gap" reduction requirement.

Year	"Reference Scenario" Annual Emissions ($MMTCO_2e$)
2020	415.8
2021	411.0
2022	405.5
2023	400.3
2024	397.6
2025	398.7
2026	396.8
2027	395.5
2028	394.4
2029	393.9
2030	388.9
2021-2030 Cumulative Emissions	3,982
Difference from Straight Line Cumulative Emissions Total	621

110. Scoping Plan Figure 7, for example, is titled "Scoping Plan Scenario – Estimated Cumulative GHG Reductions by Measure (2021–2030)." The identified measures show the amount of reductions required to "close" the 621 $MMTCO_2e$ GHG "cumulative gap" CARB invented from the difference in cumulative emissions from 2021-2030 between a hypothetical straight line trajectory to the 2030 Target and the "Reference Scenario" projections.

111. Figure 8 of the Scoping Plan and associated text provide an "uncertainty analysis to examine the range of outcomes that could occur under the Scoping Plan policies and measures" which is entirely based on the 621 $MMTCO_2e$ GHG "cumulative gap" metric.[63]

112. CARB also calculated that the cumulative annual emissions projected to occur under the "Known Commitments Scenario" from 2021-2030 would be 3,586 MMTCO2e and subtracted this amount from the cumulative emissions generated by the straight line trajectory (3,362 $MMTCO_2e$). The difference is 224 $MMTCO_2e$, which is incorrectly shown as 236 $MMTCO_2e$ in Table 3 of the Scoping Plan and in the text following Table 3. CARB illegally characterized the 224 $MMTCO_2$ difference as the "cumulative emissions reduction gap" in the "Known Commitments Scenario" in the Scoping Plan and evaluated the need for additional measures on the basis of "closing" this unlegislated and unlawful "cumulative gap".

Year	"Known Commitments Scenario" Annual Emissions ($MMTCO_2e$)
2020	405.5
2021	396.8
2022	387.1
2023	377.6
2024	367.4
2025	362.7
2026	354.4
2027	347.1
2028	340.4
2029	331.8
2030	320.4
2021-2030 Cumulative Annual Emissions	3,586
Difference from Straight Line Cumulative Emissions Total	224

[63] The analysis discussion references Scoping Plan Appendix E for more details.

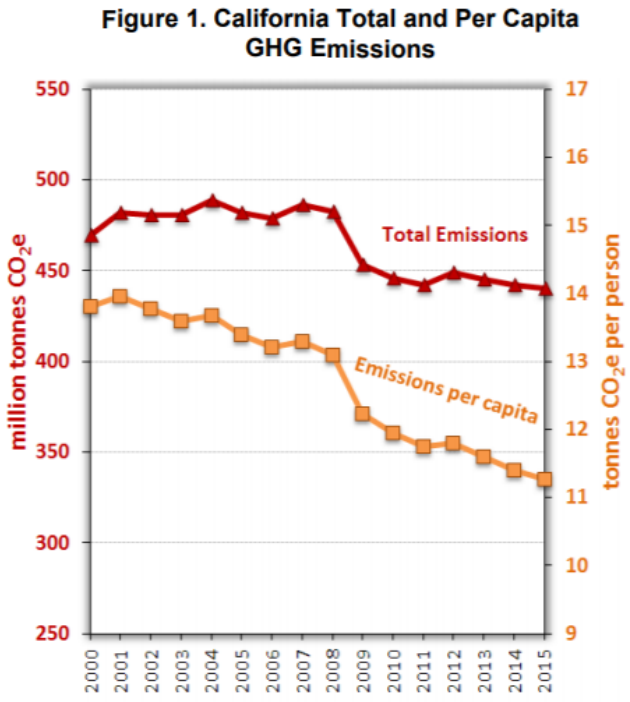
113. The California legislature in no way authorized CARB to invent a "cumulative gap" methodology based on an unreasonable and arbitrary straight line trajectory from 2020 to the 2030 Target, which counted each year's shortfall against the 2030 Target and then added all such shortfalls to inflate reduction needed from the 129 and 60 $MMTCO_2e$ (depending on scenario) required by the 2030 Target to the 621 and 224 $MMTCO_2e$ "cumulative gap" requirements.

114. SB 32 does not regulate cumulative emissions and only requires that the 2030 Target of 260 MMTCO2e be achieved by 2030. CARB's own analysis shows that existing legal requirements will reduce emissions to 320 $MMTCO_2e$ in 2030. At most, CARB was authorized to identify measures in the Scoping Plan that would further reduce emissions by 60 $MMTCO_2e$ in 2030 under the "Known Commitments Scenario". CARB instead illegally created new, and much larger "cumulative gap" reduction requirements of 224 $MMTCO_2e$ and 621 $MMTCO_2e$.

115. CARB arbitrarily determined that the straight line trajectory to the 2030 Target was the only way to reach the mandate of 260 MMTCO2e by 2030 when there are numerous potential paths that California's GHG emission reductions could take between 2021 and 2030.

116. For example, as shown in Figure 1 below, in reaching the 2020 Target, California's GHG emissions reductions have not followed a straight line trajectory, but have gone up and down based on the economy and other factors.[64]

[64] Figure 1 is from the California Air Resources Board's 2017 Edition of California's GHG Emission Inventory (June 6, 2017), p. 2, https://www.arb.ca.gov/cc/inventory/pubs/reports/2000_2015/ghg_inventory_trends_00-15.pdf.



117. CARB's arbitrary and capricious requirement that reductions must meet a cumulative GHG reduction total, rather than take any path feasible that gets the state to the 2030 Target is unlawful.

118. Both AB 32 (and earlier Scoping Plans) and SB 32 contemplated a "step down" of GHG emissions to the quantity established for the target year, with the "step down" increments occurring as new technologies, regulations, and other measures took effect. This step down approach has been part of air pollution control law for decades.

119. Under the federal Clean Air Act ("CAA"), the EPA sets National Ambient Air Quality Standards ("NAAQS") that set air quality levels in certain years for specific pollutants (*e.g.*, the 2015 NAAQS for ozone is 70 ppb and it must be achieved as expeditiously as possible). States then create and adopt State Implementation Plans ("SIPs") which include control measures to indicate how the state will meet the NAAQS standard. The reductions that the SIPs must achieve via their control measures to reach the NAAQS are always interpreted as being applicable to the target year, *i.e.*, how much reduction will need to occur in one year to reduce emissions from business as usual to the NAAQS level? The SIPs do not plan for emission reduction measures that must reduce emissions cumulatively over time (from the time of adoption of the

2015 ozone NAAQS until the year it is reached), such that not meeting the NAAQS in earlier years means that those excess emissions must be added to future years to create the required emissions reductions to balloon over time as the NAAQS goes unmet.

120. In addition, criteria air pollutants regulated by EPA, CARB, and California's local air districts are always regulated under a cost/ton disclosure metric in which the expected cost to reduce emissions must be not only explained in rulemaking documents, but taken into consideration in deciding whether to adopt any rule controlling emissions. This system has worked to reduce tailpipe emissions of criteria pollutants from passenger cars by 99% over time.

121. Given this clear and consistent pattern of EPA and CARB interpretation of the legal status of air quality levels to be achieved by a certain time, it was arbitrary and capricious for CARB to create this "deficit accounting" metric in the cumulative gap analysis rather than merely creating measures which would meet the 2030 Target by 2030.

122. CARB also used the unlawful "cumulative gap" reduction metric to identify the nature and extent of Scoping Plan reduction measures, including the GHG Housing Measures, address uncertainties in achieving these reductions, and to complete the legally mandated FA and EA for the 2017 Scoping Plan.

123. CARB's unilateral creation and use of the "cumulative gap" reduction requirement instead of the statutory SB 32 2030 Target is unlawful, and imposes new cost burdens, including on housing, that will further exacerbate the housing-induced poverty crisis.

D. The Four New, Unlawful GHG Housing Measures the 2017 Scoping Plan Authorizes

1. Unlawful VMT Reduction Requirement

124. Among the new regulations and standards added to CARB's 2017 Scoping Plan—which were not in any of its earlier scoping plans—is a requirement to reduce VMT. This requirement is part of the Scoping Plan Scenario presented in Chapter 2 in the "Mobile Source Strategy."[65]

[65] See Scoping Plan, p. 25 Table 1: Scoping Plan Scenario (listing Mobile Source Strategy (Cleaner Technology and Fuels [CTF] Scenario)).

125. The "Mobile Source Strategy" includes a requirement to reduce VMT. This allegedly would be achieved by continued implementation of SB 375, regional Sustainable Communities Strategies, statewide implementation of SB 743, and potential additional VMT reduction strategies included in Appendix C ("Potential VMT Reduction Strategies for Discussion"). Scoping Plan, p. 25.

126. The 2017 Scoping Plan states that "VMT reductions will be needed to achieve the 2030 target" and to meet the 2050 GHG emission reduction goal set in Executive Order S-3-05. Scoping Plan, p. 75.

127. CARB states that VMT reductions of 7 percent below projected VMT are necessary by 2030 and 15 percent below projected VMT by 2050. Scoping Plan, p. 101.

128. The "Mobile Source Strategy" measure requires a 15 percent reduction in total light-duty VMT from the business as usual scenario by 2050. Scoping Plan, p. 78. It also requires CARB to work with regions to update SB 375 targets to reduce VMT to reach the 2050 goal and to implement VMT as the CEQA metric for assessing transportation impacts. *Id.*

129. The "Mobile Source Strategy" as a whole is estimated to result in cumulative GHG emission reductions of 64 $MMTCO_2e$ per year. Scoping Plan, p. 28.

130. These VMT reduction requirements are included in the 2017 Scoping Plan without appropriate recognition of the counterproductive effects of such a fixation on reducing VMT in the context of affordable housing proximate to job centers.

131. The 2017 Scoping Plan notes that promoting stronger boundaries to suburban growth, such as urban growth boundaries, will reduce VMT. Scoping Plan, p. 78. This also raises housing prices within the urban growth boundary and pushes low-income Californians, including minorities, to unacceptable housing locations with long drive times to job centers.

132. Other VMT reduction measures in the 2017 Scoping Plan, such as road user and/or VMT-based pricing mechanisms, congestion pricing, and parking pricing, further disadvantage low-income and minority residents who must drive farther through more congested roads.

133. The VMT reductions called for in Chapters 2 and 5 of the Scoping Plan make no distinction for miles driven by electric vehicles with zero GHG emissions or for miles driven by

hybrid vehicles when using only electric power. Instead, they would advance a suite of new burdens, including charging individual drivers for each vehicle mile travelled, and intentionally increasing overall roadway congestion to induce more workers to use public transit.

134. CARB's new VMT requirements, which purport to encourage public transit, essentially ignore the fact that far fewer than 10% of Californians can get from their home to their jobs in less than one hour on public transit, and that public transit ridership has fallen nationally and in California.[66] CARB's new VMT requirements fail to rationally address the reality that VMT continues to increase rather than decrease in California due to increasing population and employment levels.[67]

135. CARB's answer to reducing VMT by increasing bicycling, walking, and transit use is a laughable solution for low-income Californians, such as those living in the San Joaquin Valley and commuting to jobs in the San Francisco Bay Area.[68]

136. The burden of CARB's VMT reduction measures falls disproportionately on minority workers already forced by the housing crisis to endure long and even "mega" commutes lasting more than three hours per day.[69] The vast majority of middle and lower-income jobs (disproportionately performed by minority workers) require those workers to be physically present at their job sites to be paid. Affected job categories include teachers, nurses, emergency

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[66] Laura J. Nelson, *L.A. Bus Ridership Continues to Fall: Officials Now Looking to Overhaul the System*, L.A. Times (May 23, 2017) http://www.latimes.com/local/lanow/la-me-ln-bus-ridership-study-20170518-story.html; Center for Transportation Studies, Access Across America, University of Minnesota (2017) http://www.cts.umn.edu/research/featured/access.

[67] California Air Resources Board, Updated Final Staff Report, Proposed Update to the SB 375 Greenhouse Gas Emission Reduction Targets, Feb. 2018, https://www.arb.ca.gov/cc/sb375/sb375_target_update_final_staff_report_feb2018.pdf, p. 19.

[68] Conor Dougherty, Andrew Burton, *A 2:15 Alarm, 2 Trains and a Bus Get Her to Work by 7 A.M.*, N.Y. Times (Aug. 17, 2017), https://www.nytimes.com/2017/08/17/business/economy/san-francisco-commute.html.

[69] 2007 and 2016 American Community Survey 1-Year Estimates, Table B08303 series (Travel Time To Work, Workers 16 years and over who did not work at home), https://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t (showing increase in commute time from 2007 to 2016 in California and Bay Area); 2007 and 2016 American Community Survey 1-Year Estimates, Table S802 series (Means of transportation to work by selected characteristics), https://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t (showing more Latino and noncitizen workers commuting to work by driving alone).

responders, courtroom and municipal service workers, construction workers, day care and home health care workers, retail clerks, and food service workers.[70]

137. In addition to being ill-conceived, CARB's new VMT measures are not statutorily authorized. The Legislature has repeatedly rejected proposed legislation to mandate that Californians reduce their use of cars and light duty trucks (e.g., personal pickup trucks), including most recently in 2017 (Senate Bill 150, Allen).

138. Only a different agency, the Office of Planning and Research ("OPR"), has legislative authority to regulate VMT. It has not done so. In Senate Bill 743 (2013), the Legislature authorized OPR to consider adopting VMT as a new threshold for assessing the significance of transportation impacts under CEQA, but only after OPR completed a rulemaking process and amended the regulatory requirements implementing CEQA, *i.e.*, the CEQA Guidelines (14 C.C.R. § 15000 *et seq.*) ("CEQA Guidelines"). OPR has commenced but not completed the process for amending the CEQA Guidelines as authorized by SB 743.

139. Instead of regulating VMT, CARB's role under SB 375 is to encourage higher density housing and public transit and thereby reduce GHGs. In this context, CARB has included VMT reduction metrics for helping achieve GHG reduction goals in current SB 375 targets.

140. In the past, when CARB proposed to establish standalone VMT reduction targets (independent of GHG emission reduction targets) it has been swamped with objections and concerns, including challenges to its legal authority to attempt to impose fees and restrictions on driving as a standalone mandate independent of regional GHG reduction targets.

141. Until its adoption of the 2017 Scoping Plan, CARB had rightly stopped short of purporting to set out standalone VMT reduction targets and methods. At the same meeting that CARB approved the 2017 Scoping Plan, CARB agreed to indefinitely postpone establishing regional VMT reduction targets for a variety of reasons (including but not limited to the fact that notwithstanding current efforts, VMT is actually increasing).

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[70] Adam Nagourney and Conor Dougherty, *The Cost of a Hot Economy in California: A Severe Housing Crisis,* N.Y. Times (July 17, 2017), https://www.nytimes.com/2017/07/17/us/california-housing-crisis.html.

142. Immediately following its determination to indefinitely postpone its proposal to adopt standalone VMT reduction targets, CARB nevertheless voted to approve the 2017 Scoping Plan's VMT reduction mandate, which includes in pertinent part a GHG measure requiring additional VMT reductions beyond the reductions achieved via SB 743 and SB 375. See Scoping Plan p. 25, Table 1, p. 101.

143. The inherent contradiction between the morning CARB agenda discussion indefinitely postponing establishing SB 375 VMT reduction targets, and CARB's afternoon agenda item approving the 2017 Scoping Plan, going above and beyond the VMT reductions CARB elected not to set a few hours earlier, caused widespread confusion. Even the CARB Board chair reported that she was "confused" – but CARB's unlawful action to mandate reduced driving by individual Californians was nevertheless unanimously approved in the 2017 Scoping Plan that CARB has now adopted.

144. In order to achieve these newly-mandated reductions in VMT, CARB intends to intentionally increase congestion to induce transit use. OPR's proposal for updating the CEQA Guidelines to include VMT as a metric for analyzing transportation impacts states that adding new roadway capacity increases VMT.[71] The OPR proposal further states that "[r]educing roadway capacity (i.e. a "road diet") will generally reduce VMT and therefore is presumed to cause a less than significant impact on transportation. Building new roadways, adding roadway capacity in congested areas, or adding roadway capacity to areas where congestion is expected in the future, typically induces additional vehicle travel." *Id.* at p. III:32.

145. Attempting to reduce VMT by purposefully increasing congestion by reducing roadway capacity will not lead to GHG emission reductions. Instead, increasing congestion will cause greater GHG emissions due to idling, not to mention increased criteria air pollutant[72] and

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[71] OPR, Revised Proposal on Updates to the CEQA Guidelines Evaluating Transportation Impacts in CEQA (Jan. 20, 2016), p. I:4, http://www.opr.ca.gov/docs/Revised_VMT_CEQA_Guidelines_Proposal_January_20_2016.pdf.

[72] The six criteria air pollutants designated by the Environmental Protection Agency ("EPA") are particulate matter ("PM"), ozone, nitrogen dioxide ("NO_2" or "NOx"), carbon monoxide ("CO"), sulfur dioxide ("SO_2"), and lead.

toxic air contaminant[73] emissions. CARB has no authority to impose a VMT limit and any VMT limit imposed by an agency must be approved in a formal rulemaking process.

146. As implemented, CARB's VMT reduction measure will not achieve the GHG reductions ascribed to it in the 2017 Scoping Plan and has no rational basis. In fact, it will increase air quality and climate related environmental impacts, something not analyzed in the EA for the 2017 Scoping Plan.

147. In addition, CARB has recently undergone an update of regional GHG emission reduction targets under SB 375 in which CARB stated that: "In terms of tons, CARB staff's proposed [SB 375] targets would result in an estimated additional reduction of approximately 8 million metric tons of CO2 per year in 2035 compared to the existing targets. The estimated remaining GHG emissions reductions needed would be approximately 10 million metric tons CO2 per year in 2035 based on the Scoping Plan Update scenario. These remaining GHG emissions reductions are attributed to new State-initiated VMT reduction strategies described in the Scoping Plan Update."[74]

148. Thus, CARB's only stated support for needing the VMT reduction mandates in the 2017 Scoping Plan is to close a gap to the Scoping Plan Update Scenario that the SB 375 targets will not meet. However, all of the allegedly "necessary" reductions in the Scoping Plan Update Scenario are based on CARB's unlawful "cumulative gap" reduction requirement, which, as described above, improperly ballooned the GHG reductions required from 60 to 224 $MMTCO_2e$ based on the "Known Commitments Scenario" and from 129 to 621 $MMTCO_2e$ based on the "Reference Case Scenario."

149. Because of CARB's unlawful "cumulative gap" calculation, CARB now argues that the VMT reduction mandates are necessary, but the only reason they are necessary is to meet the unlawful "cumulative gap" reduction requirements.

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[73] Toxic air contaminants, or TACs, include benzene, hexavalent chrome, cadmium, chloroform, vinyl chloride, formaldehyde, and numerous other chemicals.

[74] California Air Resources Board, Updated Final Staff Report, Proposed Update to the SB 375 Greenhouse Gas Emission Reduction Targets (Feb. 2018), p. 35, https://www.arb.ca.gov/cc/sb375/sb375_target_update_final_staff_report_feb2018.pdf.

150. There is also no evidence that CARB's estimated 10 MMTCO2e per year reductions based on the VMT reduction mandate is in any way achievable. The Right Type, Right Place report[75] estimates only 1.79 MMTCO2e per year will be reduced from both lower VMT and smaller unit size houses using less energy and thus creating lower operational emissions.

151. The Staff Report for SB 375 acknowledges that VMT has increased, that the results of new technologies are at best mixed in early reports as to VMT reductions, and that the correlation between VMT and GHG is declining.[76] There is no evidence that the 10 MMTCO2e per year reductions based on the VMT reduction mandate in the 2017 Scoping Plan is in any way something other than a number created solely based on the fundamental miscalculation about the 2030 target demonstrated by the "cumulative gap" methodology in the 2017 Scoping Plan.

2. Unlawful CEQA Net Zero GHG Threshold

152. The 2017 Scoping Plan also sets a net zero GHG threshold for all projects subject to CEQA review, asserting that "[a]chieving no net additional increase in GHG emissions, resulting in no contribution to GHG impacts, is an appropriate overall objective for new development". Scoping Plan, p. 101-102.

153. The Scoping Plan directs that this new CEQA "zero molecule" GHG threshold be presumptively imposed by all public agencies when making all new discretionary decisions to approve or fund projects in all of California, where under CEQA "project" is an exceptionally broad legal term encompassing everything from transit projects to recycled water plants, from the renovation of school playgrounds to building six units of affordable housing, from the adoption of General Plans applicable to entire cities and counties to the adoption of a single rule or regulation.

154. This is an unauthorized, unworkable and counterproductive standard as applied to new housing projects. CEQA applies to the "whole of a project", which includes construction

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[75] Nathaniel Decker et al., Right Type Right Place: Assessing the Environmental and Economic Impacts of Infill Residential Development through 2030, U.C. Berkeley Terner Center for Housing Innovation and Center for Law, Energy and the Environment (Mar. 2017), https://ternercenter.berkeley.edu/right-type-right-place.

[76] California Air Resources Board, Updated Final Staff Report, Proposed Update to the SB 375 Greenhouse Gas Emission Reduction Targets (Feb. 2018), p. 19, https://www.arb.ca.gov/cc/sb375/sb375_target_update_final_staff_report_feb2018.pdf.

activities, operation of new buildings, offsite electricity generation, waste management, transportation fuel use, and a myriad of other activities. Meeting a net zero threshold for these activities is not possible. While there have been examples of "net zero" buildings—which are more expensive than other housing[77]—none of these examples included the other components of a "project" as required by CEQA.

155. The Scoping Plan's "net zero" CEQA provisions also would raise housing and homeowner transportation costs and further delay completion of critically needed housing by increasing CEQA litigation risks—thereby exacerbating California's acute housing and poverty crisis.[78]

156. Despite CARB's claim that this "net zero" threshold is "guidance", CARB's status as the expert state agency on GHG emissions means that all lead agencies or project proponents will have to accept this standard in CEQA review unless they can prove by substantial evidence that a project cannot meet the standard.

157. The threshold has immediate evidentiary weight as the expert conclusion of the state's expert GHG agency. An agency's failure to use the 2017 Scoping Plan's CEQA threshold has already been cited as legal error in the comment letter preceding the expected lawsuit against the Northlake housing project in Los Angeles.[79]

158. A "net zero" GHG threshold is inconsistent with current California precedent affirming that compliance with law is generally an acceptable CEQA standard. See, e.g., *Center for Biological Diversity v. Dept. of Fish and Wildlife* (2016) 62 Cal.4th 204, 229 ("*Newhall*") (a lead agency can assess consistency with AB 32 goal by looking to compliance with regulatory programs). This includes, but is not limited to, using compliance with the cap-and-trade program as appropriate CEQA mitigation for GHG and transportation impacts.

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[77] LAO, Evaluating California's Pursuit of Zero Net Energy State Buildings (Nov. 14, 2017), http://www.lao.ca.gov/Publications/Report/3711.

[78] Chang-Tai Hsieh and Enrico Moretti, *How Local Housing Regulations Smother the U.S. Economy*, N.Y. Times (Sept. 6, 2017), https://www.nytimes.com/2017/09/06/opinion/housing-regulations-us-economy.html.

[79] Center for Biological Diversity, Letter to Los Angeles County (April 16, 2018), http://planning.lacounty.gov/assets/upl/case/tr073336_correspondence-20180418.pdf.

159. The Scoping Plan's expansive new "net zero" GHG CEQA threshold is directly at odds with, and is dramatically more stringent than, the existing CEQA regulatory threshold for GHG emissions. This existing threshold was adopted by OPR pursuant to specific authorization and direction from the Legislature in SB 97. In the SB 97 rulemaking context, OPR, in its Statement of Reasons, expressly rejected a "zero molecule" or "no net increase" GHG threshold (now adopted by CARB without Legislative authority) as being inconsistent with, and not supported by, CEQA's statutory provisions or applicable judicial precedent. OPR stated that "[n]otably, section 15064.4(b)(1) is not intended to imply a zero net emissions threshold of significance. As case law makes clear, there is no "one molecule rule" in CEQA."[80]

160. In January of 2017, OPR commenced a formal rulemaking process for what it describes as a "comprehensive" set of regulatory amendments to the CEQA Guidelines. After adoption of the 2017 Scoping Plan, OPR has not proposed to change the existing GHG thresholds in the Guidelines to conform with CARB's unauthorized new "net zero" GHG threshold. Instead, OPR has expressly criticized reliance on a numerical project-specific assessment of GHGs.

161. In short, CARB's "net zero" GHG threshold is inconsistent with OPR's legal conclusion that CEQA cannot be interpreted to impose a "net zero" standard.[81]

162. In addition to being Legislatively unauthorized and unlawful, the "net zero" GHG threshold would operate unconstitutionally so as to disproportionately disadvantage low income minorities in need of affordable housing relative to wealthier, whiter homeowners who currently occupy the limited existing housing stock.[82] This disadvantage arises because of the use of CEQA

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[80] OPR, Final Statement of Reasons for Regulatory Action, Amendments to the State CEQA Guidelines Addressing Analysis and Mitigation of Greenhouse Gas Emissions Pursuant to SB 97 (Dec. 2009), p. 25, http://resources.ca.gov/ceqa/docs/Final_Statement_of_Reasons.pdf.

[81] See OPR, Proposed Updates to the CEQA Guidelines (Nov. 2017), p. 81-85, http://opr.ca.gov/docs/20171127_Comprehensive_CEQA_Guidelines_Package_Nov_2017.pdf.

[82] See Richard Rothstein, Color of Law: A Forgotten History of How Our Government Segregated America (2017) for a historical review of how zoning and land use laws were designed to promote discrimination against African Americans and other communities of color, patterns that, in many instances, have been maintained to this day; see also Housing Development Toolkit, The White House (Sept. 2016), https://www.whitehouse.gov/sites/whitehouse.gov/files/images/Housing_Development_Toolkit%20f.2.pdf.

litigation by current homeowners to block new housing for others, including especially low income housing for minorities.[83]

163. Under CEQA, once an impact is considered "significant", it must be "mitigated" by avoidance or reduction measures "to the extent feasible." Pub. Res. Code §§ 21002, 21002.1; 14 C.C.R. § 15020(a)(2). By imposing a presumptive "net zero" GHG threshold on all new projects pursuant to CEQA, CARB has instantly and unilaterally increased the GHG CEQA mitigation mandate to "net zero" unless a later agency applying CEQA can affirmatively demonstrate, through "substantial evidence", that this threshold is not "feasible" as that term is defined in the CEQA Guidelines.

164. Under CEQA, any party—even an anonymous litigant—can file a CEQA lawsuit challenging the sufficiency of a project's analysis and mitigation for scores of "impacts," including GHG emissions. *See Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155.

165. Anonymous use of CEQA lawsuits, as well as reliance on CEQA lawsuits to advance economic objectives such as fast cash settlements, union wage agreements, and competitive advantage, has been repeatedly documented—but Governor Brown has been unable

[83] See Jennifer L. Hernandez, California Environmental Quality Act Lawsuits and California's Housing Crisis, 24 Hastings Envtl. L.J. (2018), https://www.hklaw.com/files/Uploads/Documents/Articles/121317_HELJ_Jennifer_Hernandez.pdf; see also Jennifer Hernandez, David Friedman, and Stephanie DeHerrera, In the Name of the Environment Update: CEQA Litigation Update for SCAG Region (2013-2015) (Jul. 2016), https://www.hklaw.com/files/UPloads/Documents/Alerts/Environment/InfillHousingCEQALawsuits.pdf; Jennifer Hernandez, David Friedman, and Stephanie DeHerrera, In the Name of the Environment: Litigation Abuse Under CEQA (August 2015), https://www.hklaw.com/publications/in-the-name-of-the-environment-litigation-abuse-under-ceqa-august-2015/.

to secure the Legislature's support for CEQA because, as he explains, unions use CEQA to leverage labor agreements.[84]

166. Using CEQA to advance economic rather than environmental objectives, and allowing anonymous lawsuits to mask more nefarious motives including racism and extortion, has established CEQA litigation (and litigation threats) as among the top reasons why adequate housing supplies have not been built near coastal jobs centers.[85]

167. The "net zero" threshold, as applied to new housing projects in California, adds significantly to the risk and CEQA litigation outcome uncertainty faced by persons who wish to build such housing.[86] Not even the California Supreme Court, in *Newhall, supra,* 62 Cal.4th 204, could decide how CEQA should apply to a global condition like climate change in the context of considering the GHG impacts of any particular project. Instead, the Supreme Court identified four "potential pathways" for CEQA compliance. Notably, none of these was the "net zero" threshold adopted by CARB in its 2017 Scoping Plan.

168. The California Supreme Court has declined to mandate, under CEQA, a non-statutory GHG threshold. Instead, the California Supreme Court has recognized that this area remains in the province of the Legislature, which has acted through directives such as SB 375. *Cleveland National Forest Foundation v. San Diego Assn. of Gov'ts* (2017) 3 Cal.5th 497 ("*SANDAG*").

169. As explained in The Two Hundred's comment letter, and referenced academic and other studies in that letter, the top litigation targets of CEQA lawsuits statewide are projects that

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[84] See Jennifer Hernandez, David Friedman, and Stephanie DeHerrera, In the Name of the Environment Update: CEQA Litigation Update for SCAG Region (2013-2015) (Jul. 2016), https://www.hklaw.com/files/UPloads/Documents/Alerts/Environment/InfillHousingCEQALawsuits.pdf, p. 10-12 (stating Governor Brown's 2016 conclusion that CEQA litigation reform was politically impossible because labor unions use litigation threats to "hammer" project sponsors into agreeing to enter into union labor agreements, and Building Trades Council lobbyist Caesar Diaz testimony in "strong opposition" to legislative proposal to require disclosure of the identity and interests of those filing CEQA lawsuits at the time CEQA lawsuits are filed, rather than at the end of the litigation process when seeking attorneys' fees, wherein Mr. Diaz concluded that requiring such disclosure would "dismantle" CEQA).

[85] Legislative Analyst's Office, California's High Housing Costs: Causes and Consequences, May 17, 2015, http://www.lao.ca.gov/reports/2015/finance/housing-costs/housing-costs.aspx.

[86] See *Id.*

include housing.[87] Over a three year period in the SCAG region, nearly 14,000 housing units were challenged in CEQA lawsuits, even though 98% of these units were located in already developed existing communities and 70% were located within a short distance of frequent transit and other existing infrastructure and public services. This and a referenced prior study also showed that the vast majority of CEQA lawsuits filed statewide are against projects providing housing, infrastructure and other public services and employment uses within existing communities.[88]

170. Thus, the same minority families victimized by the housing-induced poverty crisis, and forced to drive ever longer distances to qualify for housing they can afford to rent or buy are disproportionately affected by CEQA lawsuits attacking housing projects that are proximate to jobs.

171. Expanding CEQA to require only future occupants of acutely needed housing units to double- and triple-pay to get to and from work with a CEQA mitigation obligation to purchase GHG offsets to satisfy a "net zero" threshold unlawfully and unfairly discriminates against new occupants in violation of equal protection and due process.

172. Finally, CARB's "net zero" threshold fails to address the likelihood that it will actually be counterproductive because of "leakage" of California residents driven out to other states because of unaffordable housing prices.[89] Including this measure in the 2017 Scoping Plan bypasses statutory requirements to discourage and minimize "leakage"—movement of

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[87] See Jennifer L. Hernandez, California Environmental Quality Act Lawsuits and California's Housing Crisis, 24 Hastings Envtl. L.J. (2018), https://www.hklaw.com/files/Uploads/Documents/Articles/121317_HELJ_Jennifer_Hernandez.pdf; see also Jennifer Hernandez, David Friedman, and Stephanie DeHerrera, In the Name of the Environment Update: CEQA Litigation Update for SCAG Region (2013-2015) (Jul. 2016), https://www.hklaw.com/files/UPloads/Documents/Alerts/Environment/InfillHousingCEQALawsuits.pdf; Jennifer Hernandez, David Friedman, and Stephanie DeHerrera, In the Name of the Environment: Litigation Abuse Under CEQA (August 2015), https://www.hklaw.com/publications/in-the-name-of-the-environment-litigation-abuse-under-ceqa-august-2015/

[88] *Ibid.*

[89] California experienced a net loss of 556,710 former residents to other states during 2010 to 2017. U.S. Census Bureau, Table 4. Cumulative Estimates of the Components of Resident Population Change for the United States, Regions, States, and Puerto Rico: April 1, 2010 to July 1, 2017 (NST-EST2017-04) (Dec. 2017), https://www.census.gov/data/datasets/2017/demo/popest/nation-total.html.

economically productive activities to other states or countries that have much higher GHG emissions on a per capita basis than California. Imposing "net zero" standards that end up shutting down or blocking economic activities in California results in a global increase in GHGs when those activities move to other states or countries with higher per capita GHG emissions.[90]

173. It is noteworthy that the GWSA and SB 32 "count" only GHG emissions produced within the state, and from the generation of out-of-state electricity consumed in the state. When a family moves from California to states such as Texas (nearly three times higher per capita GHG emissions) or Nevada (more than double California's per capita GHG emissions), *global* GHG emissions increase even though California's GHG emissions decrease.

174. The housing crisis has resulted in a significant emigration of families that cannot afford California housing prices, and this emigration increases global GHG emissions—precisely the type of "cumulative" contribution to GHGs that OPR explains should be evaluated under CEQA, rather than CARB's net zero GHG threshold which numerically-focuses on project-level GHG emissions and mitigation.[91]

175. The Scoping Plan's CEQA threshold is appropriately justiciable, and should be vacated for the reasons set forth herein.

3. Unlawful Per Capita GHG Targets for Local Climate Action Plans

176. California's per capita GHG emissions are already far lower than all but two states. The only state with low per capita GHG emissions that is comparable to California is New York, which has a lower per capita GHG emission level but also six nuclear power plants

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[90] Philip Reese, *California Exports Its Poor to Texas, Other States, While Wealthier People Move In*, The Sacramento Bee (Mar. 5, 2017), http://www.sacbee.com/news/state/california/article136478098.html; Drew Lynch, *Californians Consider Moving Due to Rising Housing Costs, Poll Finds*, Cal Watchdog (Sept. 21, 2017), https://calwatchdog.com/2017/09/21/californians-consider-moving-due-rising-housing-costs-poll-finds/; U.S. Energy Information Agency, State Carbon Dioxide Emissions Data, October 2017, https://www.eia.gov/environment/emissions/state/.

[91] Philip Reese, *California Exports Its Poor to Texas, Other States, While Wealthier People Move In*, The Sacramento Bee (Mar. 5, 2017), http://www.sacbee.com/news/state/california/article136478098.html; Drew Lynch, *Californians Consider Moving Due to Rising Housing Costs, Poll Finds*, Cal Watchdog (Sept. 21, 2017), https://calwatchdog.com/2017/09/21/californians-consider-moving-due-rising-housing-costs-poll-finds/; U.S. Energy Information Agency, State Carbon Dioxide Emissions Data, October 2017, https://www.eia.gov/environment/emissions/state/.

(compared to California's one) as well as more reliable hydropower from large dams that are less affected by the cyclical drought cycles affecting West Coast rivers.[92]

177. California's current very low per capita GHG emissions are approximately 11 MMTCO2e.

178. The existing CEQA Guidelines include a provision that allows projects that comply with locally-adopted "climate action plans" ("CAPs") to conclude that project-related GHG emissions are less than significant, and thus require no further mitigation that would add to the cost of new housing projects.

179. In *Newhall*, *supra,* 62 Cal.4th at 230, the California Supreme Court endorsed CAPs, and wrote that a project's compliance with an approved CAP could be an appropriate "pathway" for CEQA compliance. No local jurisdiction is required by law to adopt a CAP, but if a CAP is adopted, then the Supreme Court has held that it must have enforceable measures to actually achieve the CAP's GHG reduction target. *SANDAG, supra,* 3 Cal.5th 497.

180. The CAP compliance pathway through CEQA was upheld in *Mission Bay Alliance v. Office of Community Invest. & Infrastructure* (2016) 6 Cal.App.5th 160. This compliance pathway provides a more streamlined, predictable, and generally cost-effective pathway for housing and other projects covered by the local CAP.

181. In stark contrast, CARB's unlawful new per capita GHG requirements effectively direct local governments—cities and counties—to adopt CAPs that reduce per capita GHG emissions from eleven to six MMTCO2e per capita by 2030, and to two MMTCO2e per capita by 2050. This mandate is unlawful.

182. First, CARB has no statutory authority to impose any 2050 GHG reduction measure in CAPs or otherwise since the Legislature has repeatedly declined to adopt a 2050 GHG target (including by rejecting earlier versions of SB 32 that included such a 2050 target), and the California Supreme Court has declined to interpret CEQA to mandate a 2050 target based on an Executive Order. *SANDAG, supra,* 3 Cal.5th at 509; *Newhall, supra,* 62 Cal.4th at 223.

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[92] U.S. Energy Information Agency, State Carbon Dioxide Emissions Data, October 2017, https://www.eia.gov/environment/emissions/state/.

183. Second, the Scoping Plan attributes the vast majority of state GHG emissions to transportation, energy, and stationary source sectors over which local governments have little or no legal jurisdiction or control. A local government cannot prohibit the sale or use of gasoline or diesel-powered private vehicles, for example—nor can a local government regulate and redesign the state's power grid, or invent and mandate battery storage technology to capture intermittent electricity produced from solar and wind farms for use during evening hours and cloudy days.

184. The limited types of GHG measures that local governments can mandate (such as installation of rooftop solar, water conservation, and public transit investments) have very small—or no—measurable quantitative effect on GHG emission reductions. The 2017 Scoping Plan Appendix recommending local government action does not identify any measure that would contribute more than a tiny fraction toward reducing a community's per capita GHG emissions to six metric tons or two metric tons, respectively.

185. Additionally, under state law, local governments' authority to require more aggressive GHG reductions in buildings is subject to a cost-effectiveness test decided by the California Building Standards Commission ("CBSC")—the same CBSC that has already determined that "net zero", even for single family homes and even for just the electricity used in such homes, is *not* yet feasible or cost-effective to impose.[93]

186. Third, it is important to consider the per capita metrics that the 2017 Scoping Plan wants local governments to achieve in their localized climate action plans in a real world context. Since most of the world's energy is still produced from fossil fuels, energy consumption is still highly correlated to economic productivity and per capita incomes and other wealth-related metrics such as educational attainment and public health.[94] The suggested very low per capita

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[93] California Energy Commission, 2019 Building Energy Efficiency Standards PreRulemaking Presentation - Proposed 2019 Building Energy Efficiency Standards ZNE Strategy (Aug. 24, 2017), http://docketpublic.energy.ca.gov/PublicDocuments/17-BSTD-01/TN220876_20170824T105443_82217_ZNE_Strategy_Presentation.pdf.

[94] See Mengpin Ge, Johannes Friedrich, and Thomas Damassa, 6 Graphs Explain the World's Top 10 Emitters, World Resources Institute (Nov. 25, 2014), https://wri.org/blog/2014/11/6-graphs-explain-world%E2%80%99s-top-10-emitters (see tables entitled "Per Capita Emissions for Top 10 Emitters" and "Emissions Intensity of Top 10 Emitters" showing that emissions are generally linked to GDP).

metrics in the 2017 Scoping Plan are currently only achieved by countries with struggling economies, minimal manufacturing and other higher wage middle income jobs, and extremely high global poverty rates.

187. Growing economies such as China and India bargained for, and received, permission to substantially increase their GHG emissions under the Paris Accord precisely because economic prosperity remains linked to energy use.[95] This is not news: even in the 1940's, the then-Sierra Club President confirmed that inexpensive energy was critical to economic prosperity AND environmental protection.

188. Nor has CARB provided the required economic or environmental analysis that would be required to try to justify its irrational and impractical new per capita GHG target requirements. As with CARB's project-level "net zero" CEQA threshold, the per capita CEQA expansion for CAPs does not quantify the GHG emission reductions to be achieved by this measure.

189. Finally, these targets effectively create CEQA thresholds as compliance with a CAP is recognized by the California Supreme Court as a presumptively valid CEQA compliance pathway. *Newhall, supra,* 62 Cal.4th at 230 (stating that local governments can use climate action plans as a basis to tier or streamline project-level CEQA analysis). The targets clearly establish CARB's position on what would (or would not) be consistent with the 2017 Scoping Plan and the State's long-term goals. Courts have stated that GHG determinations under CEQA must be consistent with the statewide CARB Scoping Plan goals, and that CEQA documents taking a goal-consistency approach to significance need to consider a project's effects on meeting the State's longer term post-2020 goals. Thus, these per capita targets are essentially self-implementing CEQA requirements that lead and responsible agencies will be required to use.

190. The CAP measure thus effectively eliminates the one predictable CEQA GHG compliance pathway that has been upheld by the courts, compliance with an adopted CAP. The

[95] Marianne Lavelle, *China, India to Reach Climate Goals Years Early, as U.S. Likely to Fall Far Short,* Inside Climate News (May 16, 2017), https://insideclimatenews.org/news/15052017/china-india-paris-climate-goals-emissions-coal-renewable-energy.

pathway that CARB's per capita GHG targets would unlawfully displace is fully consistent with the existing CEQA Guidelines adopted pursuant to full rulemaking procedures based on express Legislative direction.

191. In short, the 2017 Scoping Plan directs local governments to adopt CAPs—which the Supreme Court has explained must then be enforced—with per capita numeric GHG reduction mandates in sectors that local governments have no legal or practical capacity to meet, without any regard for the consequential losses to middle income jobs in manufacturing and other business enterprises, or to the loss of tax revenues and services from such lost jobs and businesses,[96] or to the highly disparate impact that such anti-jobs measures would have on minority populations already struggling to get out of poverty and afford housing.

192. While the 2017 Scoping Plan acknowledges that some local governments may have difficulty achieving the per capita targets if their communities have inherently higher GHG economic activities, such as agriculture or manufacturing, such communities are required to explain why they cannot meet the numeric targets—and withstand potential CEQA lawsuit challenges from anyone who can file a CEQA lawsuit.

193. As with CARB's project-level "net zero" CEQA threshold, CARB's new per capita GHG targets are entirely infeasible, unlawful, and disparately affect those in most need of homes they can afford with jobs that continue to exist in manufacturing, transportation, and other sectors having GHG emissions that are outside the jurisdiction and control of local governments.

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[96] Just four states—Ohio, Pennsylvania, Georgia and Indiana—collectively have a population and economy comparable with California. With a combined gross product of $2.25 trillion in 2016, these four states would be the 8th largest economy in the world if considered a nation. Yet despite achieving five times more GHG emission reductions than California since 2007, in 2016 these four states had 560,000 fewer people in poverty and 871,000 more manufacturing jobs (including 200,000 new jobs from 2009 to 2017 compared with just 53,000 in California). U.S. Bureau of Labor Statistics, Monthly Total Nonfarm Employment, Seasonally Adjusted, https://www.bls.gov/data/; U.S. Bureau of Economic Analysis, Table 3. Current-Dollar Gross Domestic Product (GDP) by State, 2016:Q1-2017:Q3, https://www.bea.gov/newsreleases/regional/gdp_state/qgdpstate_newsrelease.htm; Liana Fox, The Supplemental Poverty Measure: 2016, U.S. Census Bureau Report Number: P60-261 (Sept. 21, 2017), https://www.census.gov/library/publications/2017/demo/p60-261.html; U.S. Census Bureau, 2016 American Community Survey 1-Year Estimates, Table B15001, Sex by age by educational attainment for the population 18 years and over, https://factfinder.census.gov/.

They are also inconsistent with current standards and common sense and result in unjustifiable disproportionate adverse impacts on California minorities, including Petitioners.

4. Appendix C "Vibrant Communities" Policies Incorporating Unlawful VMT, "Net Zero" and CO2 Per Capita Standards

194. Chapter 5 of CARB's 2017 Scoping Plan explains that notwithstanding the other GHG Housing Measures (*e.g.*, the VMT reduction mandated in Chapter 2), California must do "more" to achieve the 2030 Target. With this in mind, CARB purports to empower eight new state agencies—including itself—with a new, non-legislated role in the plan and project approval process for local cities and counties. This hodgepodge of unlegislated, and in many cases Legislatively-rejected, new "climate" measures is included in what the Scoping Plan calls a "Vibrant Communities" appendix.

195. Cities and counties have constitutional and statutory authority to plan and regulate land use, and related community-scale health and welfare ordinances. Cities and counties are also expressly required to plan for adequate housing supplies, and in response to the housing crisis and resulting poverty and homeless crisis, in 2017 the Legislature enacted 15 new bills designed to produce more housing of all types more quickly. These include: Senate Bills ("SB") 2, SB 3, SB 35, SB 166, SB 167, SB 540, SB 897, and Assembly Bills ("AB") 72, AB 73, AB 571, AB 678, AB 1397, AB 1505, AB 1515, and AB 1521.

196. The Legislature has periodically, and expressly, imposed new statutory obligations on how local agencies plan for and approve land use projects. For example, in recent years, the Legislature required a greater level of certainty regarding the adequacy of water supplies as well as expressly required new updates to General Plans, which serve as the "constitution" of local land use authority, to expressly address environmental justice issues such as the extent to which poor minority neighborhoods are exposed to disproportionately higher pollution than wealthier and whiter neighborhoods.

197. Local government's role in regulating land uses, starting with the Constitution and then shaped by scores of statutes, is where the "rubber hits the road" on housing: without local

government approval of housing, along with the public services and infrastructure required to support new residents and homes, new housing simply cannot get built.

198. The Legislature has repeatedly authorized and/or directed specific agencies to have specific roles in land use decisionmaking.

199. The Legislature also is routinely asked to impose limits on local land use controls that have been rejected during the legislative process, such as the VMT reduction mandates described above. The Vibrant Communities Scoping Plan appendix is a litany of new policies, many of which were previously considered and rejected by the Legislature, directing eight state agencies to become enmeshed in directing the local land use decisions that under current law remain within the control of cities and counties (and their voting residents) and not within any role or authority delegated by the Legislature.

200. Just a few examples of Vibrant Community Scoping Plan measures adopted by CARB that have been expressly considered and rejected by the Legislature or are not legal include:

(A) **Establishing mandatory development area boundaries (urban growth boundaries) around existing cities,** that cannot be changed even if approved by local voters as well as the city and county, to encourage higher density development (*e.g.*, multi-story apartments and condominiums) and to promote greater transit use and reduce VMT. An authoritative study that CARB funded, as well as other peer reviewed academic studies, show that there is no substantial VMT reduction from these high density urban housing patterns—although there is ample confirmation of "gentrification" (displacement of lower income, disproportionately minority) occupants from higher density transit neighborhoods to distant suburbs and exurbs where workers are forced to drive greater distances to their jobs.[97] Mandatory urban growth boundaries have been routinely rejected in the Legislature. See AB 721 (Matthews, 2003)

[97] UCLA Department of Urban and Regional Planning, Oriented For Whom? The Impacts of TOD on Six Los Angeles Neighborhoods (June 2, 2015), http://www.urbandisplacement.org/sites/default/files/images/spring_2015_tod.pdf.

(proposing the addition of mandatory urban growth boundaries in the land use element of municipalities' general plans).

(B) **Charging new fees for cities and counties to pay for "eco-system services"** such as carbon sequestration from preserved vegetation on open space forests, deserts, agricultural and rangelands. Taxes or fees could not be imposed on residents of Fresno or Los Angeles to pay for preservation of forests in Mendocino or watersheds around Mount Lassen unless authorized by votes of the people or the Legislature—*except* that payment of fees has become a widespread "mitigation measure" for various "impacts" under CEQA. The 2017 Scoping Plan's express approval of the "Vibrant Communities" Appendix creates a massive CEQA mitigation measure work-around that can be imposed in tandem with agency approvals of local land use plans and policies that entirely bypasses the normal constitutional and statutory requirements applicable to new fees and taxes. Since CEQA applies only to new agency approvals, this unlawful and unauthorized framework effectively guarantees that residents of newly-approved homes will be required to shoulder the economic costs of the additional "mitigation" measures. This idea of taxation has been rejected by voter initiatives such as Proposition 13 (which limits ad valorem tax on real property to 1 percent and requires a 2/3 vote in both houses to increase state tax rates or impose local special taxes) and Proposition 218 (requiring that all taxes and most charges on property owners are subject to voter approval).

(C) **Intentionally worsening roadway congestion**, even for voter-funded and CARB-approved highway and roadway projects, to "induce" people to rely more on walking, biking, and public transit, and reduce VMT. Efficient goods movement, and avoidance of congestion, on California's highways and roads is required under both federal and state transportation and air quality laws. This component of "Vibrant Communities" is another example of a VMT reduction mandate, but is even more flatly inconsistent with applicable laws and common sense. Voters have routinely approved funding for new carpool lanes and other congestion relief projects. The goods movement industry—which is linked to almost 40% of all economic activity in Southern California and is critical to agricultural and other product-based business sectors throughout

California—cannot function under policies that intentionally increase congestion.[98] CARB has itself approved hundreds of highway improvement projects pursuant to the Legislative mandates in SB 375—yet the "Vibrant Communities" appendix unilaterally rejects this by telling Californians not to expect any relief from gridlock, ever again. The Legislature and state agencies have also consistently rejected VMT reduction mandates. See SB 150 (Allen, 2017) (initially requiring regional transportation plans to meet VMT reductions but modified before passage); SB 375 (Steinberg, 2008) (early version stating bill would require regional transportation plan to include preferred growth scenario designed to achieve reductions in VMT but modified before passage).

(D) **Mileage-based road pricing strategies which charge a fee per miles driven.** These types of "pay as you drive" fees are barred by current California law, which prohibits local agencies from "imposing a tax, permit fee or other charge" in ways that would create congestion pricing programs. Vehicle Code § 9400.8. Yet CARB attempts to override a Legislative mandate via the 2017 Scoping Plan and its "Vibrant Communities" strategies.

201. Through the Vibrant Communities strategies, CARB attempts to give state agencies expansive authority and involvement in city and county decisionmaking. The 2017 Scoping Plan asserts that the Vibrant Communities strategies will reduce GHG emissions by an amount that is "necessary" to achieving California's 2030 Target. However, no effort is made by CARB to quantify the reductions it anticipates would result from injecting these agencies into local decisionmaking processes. Instead, CARB merely states that the "Vibrant Communities" appendix is a supposedly-necessary step to meet the 2030 Target.

202. The eight named state agencies CARB attempts to give unauthorized authority over local actions are:[99]

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[98] Edward Humes, *Four Easy Fixes for L.A. Traffic,* L.A. Times (Apr. 10, 2016), http://www.latimes.com/opinion/livable-city/la-oe-humes-why-cant-trucks-and-cars-just-get-along-20160410-story.html; Eleanor Lamb, *California Eyes Future Projects to Relieve Freight Congestion,* Transport Topics (Mar. 26, 2018), http://www.ttnews.com/articles/california-eyes-future-projects-relieve-freight-congestion.

[99] Several of the eight named agencies are parent agencies, each of which has several subordinate agencies and departments. If these are counted, they collectively elevate the number of state agencies being coopted to join in CARB's local land use power grab to nearly twenty.

(1) **Business, Consumer Services and Housing Agency**, which among other subordinate agencies includes the Department of Housing and Community Development (HCD), which alone among these agencies has direct statutory responsibility for designating housing production and corresponding land use planning requirements for cities and counties;

(2) **California Environmental Protection Agency**, which is the parent agency for CARB as well as several other agencies and departments;

(3) **California Natural Resources Agency**, another parent agency of subordinate agencies and departments;

(4) **California State Transportation Agency**, most notably **Caltrans** – which the Scoping Plan would redirect from implementing their statutory responsibilities to reduce congestion and facilitate transportation on the state's highways to instead advancing CARB's "road diet" policy of intentionally increasing congestion to satisfy CARB's desire to induce more public transit ridership;

(5) **California Health and Human Services Agency**, which among other duties administers health and welfare assistance programs;

(6) **California Department of Food and Agriculture**, which among other duties regulates food cultivation and production activities;

(7) **Strategic Growth Council**, formed in 2008 by SB 732, which is tasked with "coordinating" activities of state agencies to achieve a broad range of goals but has no independent statutory authority to regulate housing or local land use plans and projects; and

(8) **Governor's Office of Planning and Research**, which has statutory responsibility to issue the CEQA Guidelines as well as "advisory" guidelines for local agency preparation of General Plans pursuant to Gov. Code § 65040.

203. The "Vibrant Communities" Appendix includes provisions that conflict with applicable law and/or have been rejected by the Legislature and cannot now be imposed by CARB through the 2017 Scoping Plan given California's comprehensive scheme of agency-allocated land use obligations (certain agencies—such as California Department of Fish and

Game, the Regional Water Quality Control Boards, and the Coastal Commission—already possess land use authority or obligations based on statutory or voter-approved schemes).

204. If CARB intends that other agencies be imbued with similar land use authority, it should ask the Legislature for such authority for those agencies, not its own Board. The "Vibrant Communities" Appendix should be struck from the 2017 Scoping Plan for this reason.

205. Less housing that is more expensive (urban growth boundary)[100], increased housing cost (CEQA mitigation measure fees), and ever-worsening gridlock resulting in ever-lengthier commutes with ever-increasing vehicular emissions and ever-reduced time at home with children, is the dystopian "necessity" built into the "Vibrant Communities" appendix.

206. Bureaucrats and tech workers in the "keyboard" economy who can work remotely, with better wages, benefits and job security that remove the economic insecurity of lifetime renter status, should be just fine. They can live in small apartments in dense cities filled with coffee shops and restaurants, rely on home delivery of internet-acquired meals and other goods, and enjoy "flextime" jobs that avoid the drudgery of the five-day work week model.

207. But for the rest of the California populace—including particularly the people (disproportionately minorities) staffing those restaurants and coffee shops, delivering those goods, providing home healthcare and building and repairing our buildings and infrastructure, and those Californians that are actually producing food and manufacturing products that are consumed in California and around the world—"Vibrant Communities" is where they can't afford to live, where they sleep in their cars during the week, where they fall into homelessness for missing rental payments because of an illness or injury to themselves or a family member.[101] For these folks, "Vibrant Communities" amounts to an increase in poverty, homelessness, and premature "despair deaths" as well as permanent drop outs from the work force.

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[100] Shishir Mathur, Impact of Urban Growth Boundary on Housing and Land Prices: Evidence from King County, Washington, Journal of Housing Studies Vol. 29 – Issue 1 (2014), https://tandfonline.com/doi/abs/10.1080/02673037.2013.825695.

[101] Alastair Gee, *Low-income workers who live in RVs are being 'chased out' of Silicon Valley streets,* The Guardian (June 29 2017), https://www.theguardian.com/us-news/2017/jun/29/low-income-workers-rvs-palo-alto-california-homeless.

208. For the foregoing reasons, the "Vibrant Communities" appendix is an unlawful and unconstitutional attempt by CARB to supplant existing local land use law and policy processes with a top-down regime that is both counterproductive and discriminatory against already-disadvantaged minority Californians, including but not limited to Petitioners.

E. CARB's Inadequate Environmental Analysis and Adverse Environmental Effects of the 2017 Scoping Plan

209. Along with the 2017 Scoping Plan, CARB prepared an EA purporting to comply with CEQA requirements.[102]

210. Under its certified regulatory program, CARB need not comply with requirements for preparing initial studies, negative declarations, or environmental impact reports. CARB's actions, however, remain subject to other provisions of CEQA. CEQA Guidelines § 15250.

211. CARB's regulatory program is contained in 17 C.C.R. §§ 60005, 60006, and 60007. These provisions require the preparation of a staff report at least 45 days before the public hearing on a proposed regulation, which report is required to be available for public review and comment. It is also CARB's policy "to prepare staff reports in a manner consistent with the environmental protection purposes of [ARB's] regulatory program and with the goals and policies of [CEQA]." The provisions of the regulatory program also address environmental alternatives and responses to comments on the EA.

212. For purposes of its CEQA review, CARB defined the project as the Proposed Strategy for Achieving California's 2030 Greenhouse Gas Target (Scoping Plan) and the recommended measures in the 2017 Plan (Chapter 2).

213. The Draft EA was released on or about January 20, 2017 for an 80-day public review period that concluded on or about April 10, 2017.

214. On or about November 17, 2017, CARB released the Final EA. CARB did not modify the Draft EA to bring it into compliance with CEQA's requirements.

[102] CARB has a regulatory program certified under Pub. Res. Code § 21080.5 and pursuant to this program CARB conducts environmental analyses to meet the requirements of CEQA.

215. The Final EA provides a programmatic analysis of the potential for adverse environmental impacts associated with implementation of the 2017 Scoping Plan. It also describes feasible mitigation measures for identified significant impacts.

216. The Final EA states that, although the 2017 Scoping Plan is a State-level planning document that recommends measures to reduce GHG emissions to achieve the 2030 target, and its approval does not directly lead to any adverse impacts on the environment, implementation of the measures in the Plan may indirectly lead to adverse environmental impacts as a result of reasonably foreseeable compliance responses.

217. The Final EA also states that CARB expects that many of the identified potentially significant impacts can be feasibly avoided or mitigated to a less-than-significant level either when the specific measures are designed and evaluated (e.g., during the rulemaking process) or through any project-specific approval or entitlement process related to compliance responses, which typically requires a project-specific environmental review.

218. The EA violated CEQA by failing to comply with its requirements in numerous ways, as described below.

1. Deficient Project Description

219. The EA's Project description was deficient because CARB did not assess the "whole of the project" as required by CEQA. The GHG Housing Measures are included in the 2017 Scoping Plan (in Chapters 2 and 5) and thus the "project" for CEQA purposes should have been defined to include potential direct and indirect impacts on the environment from the four GHG Housing Measures. Instead, CARB described the Project for CEQA purposes as the measures only in Chapter 2 of the 2017 Scoping Plan.

220. CARB has acknowledged that Chapter 5 of the 2017 Scoping Plan (which sets out the new GHG Housing Measures) was not part of what it analyzed in issuing the Scoping Plan. In CARB's words, "These recommendations in the 'Enabling Local Action' subchapter of the

Scoping Plan are not part of the proposed 'project' for purposes of CEQA review."[103] Thus, CARB admits that it did not even pretend to analyze the consequences of the provisions of Chapter 5 of the Scoping Plan.

221. The VMT reduction requirement is part of the Scoping Plan Scenario presented in Chapter 2 in the "Mobile Source Strategy".[104] Chapter 2 is included in the description of the Project in the EA but Chapter 5 is not, despite the fact that the VMT reduction mandate is found in both chapters.

222. For this reason, CARB applied an unreasonable and unlawful "project" definition and undermined CEQA's informational and decision-making purposes.

2. Improper Project Objectives

223. The Project objectives in the EA are also improperly defined in relation to the 2017 Scoping Plan, the unlawful GHG Housing Measures, and the goals explained in the 2017 Scoping Plan.[105] The EA states that the primary objectives of the 2017 Scoping Plan are:

- Update the Scoping Plan for achieving the maximum technologically feasible and cost-effective reductions in GHG emissions to reflect the 2030 target;
- Pursue measures that implement reduction strategies covering the State's GHG emissions in furtherance of executive and statutory direction to reduce GHG emissions to at least 40 percent below 1990 levels by 2030;
- Increase electricity derived from renewable sources from one-third to 50 percent;
- Double efficiency savings achieved at existing buildings and make heating fuels cleaner;
- Reduce the release of methane and other short-lived climate pollutants;

[103] Supplemental Responses to Comments on the Environmental Analysis Prepared for the Proposed Strategy for Achieving California's 2030 Greenhouse Gas Target (Dec. 14, 2017), p. 14-16, https://www.arb.ca.gov/cc/scopingplan/final-supplemental-rtc.pdf.

[104] Scoping Plan, p. 25 Table 1: Scoping Plan Scenario (listing Mobile Source Strategy (Cleaner Technology and Fuels [CTF] Scenario)).

[105] Appendix F to 2017 Scoping Plan, Final Environmental Analysis for the Strategy for Achieving California's 2030 Greenhouse Gas Target, p. 10-11, https://www.arb.ca.gov/cc/scopingplan/2030sp_appf_finalea.pdf.

- Pursue emission reductions that are real, permanent, quantifiable, verifiable and enforceable;
- Achieve the maximum technologically feasible and cost-effective reductions in GHG emissions, in furtherance of reaching the statewide GHG emissions limit;
- Minimize, to the extent feasible, leakage of emissions outside of the State;
- Ensure, to the extent feasible, that activities undertaken to comply with the measures do not disproportionately impact low-income communities;
- Ensure, to the extent feasible, that activities undertaken pursuant to the measures complement, and do not interfere with, efforts to achieve and maintain the NAAQS and CAAQS and reduce toxic air contaminant ("TAC") emissions;
- Consider overall societal benefits, including reductions in other air pollutants, diversification of energy sources, and other benefits to the economy, environment, and public health;
- Minimize, to the extent feasible, the administrative burden of implementing and complying with the measure;
- Consider, to the extent feasible, the contribution of each source or category of sources to statewide emissions of GHGs;
- Maximize, to the extent feasible, additional environmental and economic benefits for California, as appropriate;
- Ensure that electricity and natural gas providers are not required to meet duplicative or inconsistent regulatory requirements.

224. Because CARB used the unlawful "cumulative gap" methodology to calculate the emission reductions that it was required to achieve by 2030, the 2017 Scoping Plan does not meet the project objectives as described in the EA, *i.e.*, to meet the 2030 Target.

225. As explained throughout this Petition, CARB's 2017 Scoping Plan and the unlawful GHG Housing Measures are not cost-effective, are contrary to law, are not equitable to all Californians, and will increase criteria and TAC emissions preventing attainment of the NAAQS and CAAQS

226. For this reason, other alternatives to the 2017 Scoping Plan, including an alternative without the GHG Housing Measures, should have been assessed in the EA.

3. Illegal Piecemealing

227. CEQA requires an environmental analysis to consider the whole of the project and not divide a project into two or more pieces to improperly downplay the potential environmental impacts of the project on the environment.

228. CARB improperly piecemealed its 2017 Scoping Plan and the GHG Housing Measures within it from its similar and contemporaneous SB 375 GHG target update.[106] Both projects address mandated GHG reductions based on VMT and thus should have been addressed as one project for CEQA purposes.

229. In separately issuing the 2017 Scoping Plan and the SB 375 GHG target update, CARB improperly piecemealed a project under CEQA and thus the EA is inadequate as a matter of law.

4. Inadequate Impact Analysis

230. The analysis in the EA also was deficient because the EA did not analyze impacts from implementing the four GHG Housing Measures in Chapter 5, including, but not limited to, the CEQA net zero threshold, the VMT limits, and per capita GHG CAP targets, and the suite of Vibrant Communities measures.

231. Potential environmental impacts from these GHG Housing Measures overlap substantially with similar high density, transit-oriented, automobile use reduction measures included in regional plans to reduce GHGs from the land use and transportation sectors under SB 375. CARB has reviewed and approved more than a dozen SB 375 regional plans, each of which is informed by its own "programmatic environmental impact report ("PEIR").

232. Each PEIR for each regional plan has identified multiple significant adverse environmental impacts which cannot be avoided or further reduced with feasible mitigation

[106] California Air Resources Board, Updated Final Staff Report, Proposed Update to the SB 375 Greenhouse Gas Emission Reduction Targets (Feb. 2018), https://www.arb.ca.gov/cc/sb375/sb375.htm.

measures or alternatives.[107] In the first regional plan adopted for the SCAG region, California's most-populous region, the PEIR compared the impacts of developing all new housing within previously-developed areas in relation to developing half of such new housing in such areas, and the other half in previously-undeveloped areas near existing major infrastructure like freeways.

233. The SCAG 2012 PEIR concluded that the all-infill plan caused substantially more unavoidable significant adverse environmental impacts in relation to the preferred plan which divided new development equally between infill and greenfield locations.[108]

234. Following public comments and refinement of the PEIR (inclusive of the addition and modification of various mitigation measures to further reduce significant adverse environmental impacts), SCAG approved the mixed infill/greenfield plan instead of the all-infill alternative. CARB then approved SCAG's plan—first in 2012 and then again in 2016—as meeting California's applicable statutory GHG reduction mandates.[109]

235. The Scoping Plan's GHG Housing Measures now direct an infill only (or mostly infill) outcome, which SCAG's 2012 PEIR assessed and concluded caused far worse environmental impacts, even though it would result in fewer GHG emissions. In other words, SCAG's PEIR—and the other regional land use and transportation plan PEIRs prepared under SB 375—all disclosed a panoply of adverse non-GHG environmental impacts of changing California's land use patterns, and shaped both their respective housing plans and a broad suite of mitigation measures to achieve California's GHG reduction mandates while minimizing other adverse environmental impacts to California.

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[107] See SB 375 "Sustainable Communities Strategies" review page at https://www.arb.ca.gov/cc/sb375/sb375.htm, which includes links to the regional land use and transportation plans for multiple areas (which then further link to the PEIRs).

[108] SCAG, Final PEIR for the 2012-2035 RTP/SCS (April 2012), http://rtpscs.scag.ca.gov/Pages/Final-2012-PEIR.aspx.

[109] CARB Executive Order accepted the SCAG determination that its regional plan that balanced infill and greenfield housing development, and increased transit investments to encourage greater transit use without any VMT reduction mandate, would meet the GHG reduction targets mandated by law. See generally https://www.arb.ca.gov/cc/sb375/sb375.htm.

236. CARB's willful refusal to acknowledge, let alone analyze, the numerous non-GHG environmental impacts of its GHG Housing Measures in the 2017 Scoping Plan EA is an egregious CEQA violation.

237. Based on the greater specificity and the significant unavoidable adverse non-GHG environmental impacts identified in regional SB 375 plan PEIRs, the EA here clearly did not fully analyze the potential adverse environmental impacts from creating high-density, transit-oriented development that will result from the measures in the 2017 Scoping Plan, such as:

- Aesthetic impacts such as changes to public or private views and character of existing communities based on increased building intensities and population densities;
- Air quality impacts from increases in GHG, criteria pollutants, and toxic air contaminant emissions due to longer commutes and forced congestion that will occur from the implementation of the VMT limits in the 2017 Scoping Plan;
- Biological impacts from increased usage intensities in urban parks from substantial infill population increases;
- Cultural impacts including adverse changes to historic buildings and districts from increased building and population densities, and changes to culturally and religiously significant resources within urbanized areas from increased building and population densities;
- Urban agriculture impacts from the conversion of low intensity urban agricultural uses to high intensity, higher density uses from increasing populations in urban areas, including increasing the urban heat island GHG effect;
- Geology/soils impacts from building more structures and exposing more people to earthquake fault lines and other geologic/soils hazards by intensifying land use in urban areas;
- Hazards and hazardous materials impacts by locating more intense/dense housing and other sensitive uses such as schools and senior care facilities near freeways, ports, and stationary sources in urbanized areas;

- Hydrology and water quality impacts from increasing volumes and pollutant loads from stormwater runoff from higher density/intensity uses in transit-served areas as allowed by current stormwater standards;
- Noise impacts from substantial ongoing increases in construction noise from increasing density and intensity of development in existing communities and ongoing operational noise from more intensive uses of community amenities such as extended nighttime hours for parks and fields;
- Population and housing impacts from substantially increasing both the population and housing units in existing communities;
- Recreation and park impacts from increasing the population using natural preserve and open space areas as well as recreational parks;
- Transportation/traffic impacts from substantial total increases in VMT in higher density communities, increased VMT from rideshare/carshare services and future predicted VMT increases from automated vehicles, notwithstanding predicted future decrease in private car ownership;
- Traffic-gridlock related impacts and multi-modal congestion impacts including noise increases and adverse transportation safety hazards in areas of dense multi-modal activities;
- Public safety impacts due to impacts on first responders such as fire, police, and paramedic services from congested and gridlocked urban streets; and
- Public utility and public service impacts from substantial increases in population and housing/employment uses and demands on existing water, wastewater, electricity, natural gas, emergency services, libraries and schools.

238. CARB failed to complete a comprehensive CEQA evaluation of these and related reasonably foreseeable impacts from forcing all or most development into higher densities within existing urban area footprints, intentionally increasing congestions and prohibiting driving, and implementing each of the many measures described in the "Vibrant Communities" appendix. The

EA failed to identify, assess, and prescribe feasible mitigation measures for each of the significant unavoidable impacts identified above.

F. CARB's Insufficient Fiscal Analysis and Failure To Comply with the APA's Cost-Benefit Analysis Requirements

239. The APA sets out detailed requirements applicable to state agencies proposing to "adopt, amend or repeal any administrative regulation." Gov. Code § 11346.3.

240. CARB is a state agency with a statutory duty to comply with the rulemaking laws and procedures set out in the APA.

241. The APA requires that CARB, "prior to submitting a proposal to adopt, amend, or repeal a regulation to the office [of Administrative Law], shall consider the proposal's impact on business, with consideration of industries affected including the ability of California businesses to compete with businesses in other states. For purposes of evaluating the impact on the ability of California businesses to compete with businesses in other states, an agency shall consider, but not be limited to, information supplied by interested parties." Gov. Code § 11346.3(a) (2).

242. The APA further requires that "[a]n economic assessment prepared pursuant to this subdivision for a major regulation proposed on or after November 1, 2013, shall be prepared in accordance with subdivision (c), and shall be included in the initial statement of reasons as required by Section 11346.2." Gov. Code § 11346.3(a)(3).

243. CARB's new GHG Housing Measures will have an economic impact on California business enterprises and individuals in an amount exceeding fifty million dollars ($50,000,000) and therefore constitute a "major regulation" within the meaning of the APA and the California Department of Finance regulations incorporated therein. Gov. Code § 11346.3(c); 1 C.C.R. § 2000(g).

244. In adopting its 2017 Scoping Plan, CARB has failed to comply with these and other economic impact analysis requirements of the APA.

245. The 2017 Scoping Plan continues CARB's use of highly aggregated macroeconomic models that provide almost no useful information about potential costs and

impacts in industries and households. The LAO, an independent state agency, has consistently pointed out the flaws in CARB's approach since the first Scoping Plan was developed in 2008.

246. CARB's disregard of the APA's economic impact analysis requirements in issuing the 2017 Scoping Plan is only the latest example of a repeated flouting of the APA's requirements in pursuit of its pre-determined regulatory goals. The inadequacy of CARB's compliance with APA requirements has been documented in multiple LAO documents, including the following:

- In a November 17, 2008 letter to Assembly Member Roger Niello,[110] the LAO found that "ARB's economic analysis raises a number of questions relating to (1) how implementation of AB 32 was compared to doing BAU, (2) the incompleteness of the ARB analysis, (3) how specific GHG reduction measures are deemed to be cost-effective, (4) weak assumptions relating to the low-carbon fuel standard, (5) a lack of analytical rigor in the macroeconomic modeling, (6) the failure of the plan to lay out an investment pathway, and (7) the failure by ARB to use economic analysis to shape the choice of and reliance on GHG reduction measures."
- In a March 4, 2010 letter to State Senator Dave Cogdill,[111] the LAO stated that while large macroeconomic models used by CARB in updated Scoping Plan assessments can "capture some interactions among broad economic sectors, industries, consumer groupings, and labor markets," the ability of these models to "adequately capture behavioral responses of households and firms to policy changes is more limited. Additionally, because the data in such models are highly aggregated, they capture at best the behavioral responses of hypothetical "average" households and firms and do not score well in capturing and predicting the range of behavioral responses to policy changes that can occur for individual or subgroupings of households or firms. As a result, for example, the adverse jobs impacts—including job losses associated with those firms that are especially negatively impacted by the Scoping Plan—can

[110] LAO, http://www.lao.ca.gov/2008/rsrc/ab32/AB32_scoping_plan_112108.pdf.

[111] LAO, http://www.lao.ca.gov/reports/2010/rsrc/ab32_impact/ab32_impact_030410.aspx.

be hard to identify since they are obscured within the average outcome." The letter further noted multiple ways that the SP could affect jobs.

- Similarly, in a June 16, 2010 letter to Assembly Member Dan Logue,[112] the LAO found that CARB's revision to CARB's 2008 Scoping Plan analysis "still exhibits a number of significant problems and deficiencies that limit its reliability. These include shortcomings in a variety of areas including modeling techniques, identification of the relative marginal costs of different SP measures, sensitivity and scenario analyses, treatment of economic and emissions leakages, identification of the market failures used to justify the need for the regulations selected, analysis of specific individual regulations to implement certain Scoping Plan measures, and various data limitations." As a result, the LAO concluded that, contrary to CARB's statutory mandates, "The SP May Not Be Cost-Efficient." Given these and other issues, it is unclear whether the current mix and relative importance of different measures in the Scoping Plan will achieve AB 32's targeted emissions reductions in a cost-efficient manner as required."
- In a June 2017 presentation to the Joint Committee on Climate Change Policies, *Overview of California Climate Goals and Policies,*[113] and after the draft 2017 Scoping Plan had been released for public review, the LAO concluded that "To date, there have been no robust evaluations of the overall statewide effects—including on GHG reductions, costs, and co-pollutants—of most of the state's major climate policies and spending programs that have been implemented."

247. CARB's persistent failure to address the APA's economic analysis requirements, and its penchant for "jumping the gun" by taking actions without first complying with CEQA and other rulemaking requirements, also has drawn criticism from the courts.

[112] LAO, http://www.lao.ca.gov/reports/2010/rsrc/ab32_logue_061610/ab32_logue_061610.pdf.

[113] LAO, http://lao.ca.gov/handouts/resources/2017/Overview-California-Climate-Goals-Policies-061417.pdf.

248. In *Lawson v. State Air Resources Board* (2018) 20 Cal.App.5th 77, 98, 110-116 ("*Lawson*"), the Fifth District Court of Appeal, in upholding Judge Snauffer's judgment, found both that CARB "violated CEQA by approving a project too early" and that it also violated the APA. The Court explained the economic impact assessment requirements of the APA "granularly" to provide guidance to CARB for future actions and underscored that "an agency's decision to include non-APA compliant interpretations of legal principles in its regulations will not result in additional deference to the agency", because to give weight or deference to an improperly-adopted regulation "would permit an agency to flout the APA by penalizing those who were entitled to notice and opportunity to be heard but received neither." *Id.* at 113. Despite these recent warnings, CARB has chosen to proceed without complying with CEQA or the APA.

249. CARB's use of the improper "cumulative gap" methodology to determine the GHG reductions it claims are necessary for the 2017 Scoping Plan to meet the 2030 Target means that the inputs for the CARB FA were improper. The FA, which is supposed to inform policymakers and the public about the cost-effectiveness and equity of the Scoping Plan measures, is based on meeting the 621 $MMTCO_2e$ GHG "cumulative gap" reduction requirement invented by CARB.

250. In fact, the final FA adopted by CARB indicates that an earlier version was based on the asserted "need" to fill an even larger "cumulative gap" of 680 $MMTCO_2e$. This improper analysis renders the FA and the cost analysis required under the APA invalid.

G. The Blatantly Discriminatory Impacts of CARB's 2017 Scoping Plan

251. CARB has recognized that "[i]t is critical that communities of color, low-income communities, or both, receive the benefits of the cleaner economy growing in California, including its environmental and economic benefits." Scoping Plan, p. 15.

252. The GWSA specifically provides, at H&S Code § 38565, that: "The state board shall ensure that the greenhouse gas emission reduction rules, regulations, programs, mechanisms, and incentives under its jurisdiction, where applicable and to the extent feasible, direct public and private investment toward the most disadvantaged communities in California and provide an opportunity for small businesses, schools, affordable housing associations, and other community

institutions to participate in and benefit from statewide efforts to reduce greenhouse gas emissions."

253. CARB's standards, rules, and regulations also must, by statute, be consistent with the state goal of providing a decent home and suitable living environment for every Californian. H&S Code § 39601(c). This includes affordable housing near jobs for hard working, low-income minority families.

254. California produces less than one percent of global GHG emissions, and has lower per capita GHG emissions than any other large state except New York, which unlike California still has multiple operating nuclear power plants to reduce its GHG emissions.[114]

255. As Governor Brown and many others have recognized, California's climate change leadership depends not on further mass reductions of the one percent of global GHG emissions generated within California, but instead on having other states and nations persuaded to follow the example already set by California.

256. In any event, as recently demonstrated in a joint study completed by scholars from the University of California at Berkeley and regulators at the Bay Area Air Quality Management District ("BAAQMD")[115], high wealth households cause far more global GHG emissions than middle-class and poor households. The Scoping Plan ignores this undisputed scientific fact and unfairly, and unlawfully, seeks to burden California's minority and middle-class households in need of affordable housing with new regulatory costs and burdens that do not affect existing, wealthier homeowners who "already have theirs".

257. California has the nation's highest poverty rate, highest housing prices, greatest housing shortage, highest homeless population—and highest number of billionaires.[116] While it is

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[114] U.S. Energy Information Agency, State Carbon Dioxide Emissions Data, October 2017, https://www.eia.gov/environment/emissions/state/.

[115] BAAQMD and Cool Climate Network at UC Berkeley, Consumption Based GHG Emissions Inventory (2016), http://www.baaqmd.gov/research-and-data/emission-inventory/consumption-based-ghg-emissions-inventory.

[116] David Friedman, Jennifer Hernandez, California's Social Priorities, Holland & Knight, Chapman University Press (2015), https://perma.cc/XKB7-4YK4; Liana Fox, The Supplemental Poverty Measure: 2016, U.S. Census Bureau Report Number: P60-261, Table A-5 (Sept. 21, 2017), https://www.census.gov/library/publications/2017/demo/p60-261.html.

not the function of the courts to address economic inequalities, the federal and state Constitutions prohibit the State from enacting regulatory provisions that have the inevitable effect of unnecessarily and disproportionately disadvantaging minority groups by depriving them of access to affordable housing that would be available in greater quantity but for CARB's new GHG Housing Measures.

258. Members of hard working minority families, in contrast to wealthier white elites, currently are forced to "drive until they qualify" for housing they can afford to own, or even rent.[117] As a result, long-commute minority workers and their families then suffer a cascading series of adverse health, educational and financial consequences.[118]

259. It is well-documented and undisputed, in the record that the current housing shortage—which CARB's regulations would unnecessarily exacerbate—falls disproportionately on minorities. As stated in a United Way Study, "Struggling to Get By: The Real Cost Measure in California 2015" [119]: "Households led by people of color, particularly Latinos, disproportionately are likely to have inadequate incomes. Half (51%) of Latino households have incomes below the Real Cost Measure,[120] the highest among all racial groups. Two in five (40%) of African American households have insufficient incomes, followed by other races/ethnicities (35%), Asian Americans (28%) and white households (20%)." Put simply, approximately 80% of the poorest households in the State are non-white families.

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[117] Mike McPhate, *California Today: The Rise of the Super Commuter,* N.Y. Times (Aug. 21, 2017), https://www.nytimes.com/2017/08/21/us/california-today-super-commutes-stockon.html; Conor Dougherty, Andrew Burton, *A 2:15 Alarm, 2 Trains and a Bus Get Her to Work by 7 A.M.*, N.Y. Times (Aug. 17, 2017), https://www.nytimes.com/2017/08/17/business/economy/san-francisco-commute.html.

[118] Rebecca Smith, Here's the impact long commutes have on your health and productivity, *Business Insider* (May 22, 2017), http://www.businessinsider.com/long-commutes-have-an-impact-on-health-and-productivity-2017-5.

[119] Betsy Block et al, Struggling to Get By: The Real Cost Measure in California 2015 (2016), p. 10, https://www.norcalunitedway.org/sites/norcalunitedway.org/files/Struggling_to_Get_By_3.pdf.

[120] The United Way study uses the "Real Cost Measure" to take account of a family budget to meet basic needs, composed of "costs all families must address such as food, housing, transportation, child care, out-of-pocket health expenses, and taxes." *Id.*, p. 8.

260. As noted in the same report: "Housing costs can consume almost all of a struggling household's income. According to Census Bureau data, housing (rent, mortgage, gas/electric) makes up 41% of household expenses in California. . . . Households living above the Federal Poverty Level but below the Real Cost Measure spend almost half of their income on rent (and more in many areas), and households below the Federal Poverty Level, however, report spending 80% of their income on housing, a staggering amount that leaves precious little room for food, clothing and other basics of life." *Id.*, p. 65.[121]

261. As further documented in the United Way report presented to CARB: "Recognizing that households of all kinds throughout the state are struggling should not obscure one basic fact: race matters. Throughout Struggling to Get By, we observe that people of Latino or African American backgrounds (and to a lesser extent Asian American ones) are less likely to meet the Real Cost Measure than are white households, even when the families compared share levels of education, employment backgrounds, or family structures. While all families face challenges in making ends meet, these numbers indicate that families of color face more obstacles in attempting to achieve economic security."[122]

262. Against this background, CARB's new GHG Housing Measures, which disproportionately harm housing-deprived minorities while not materially advancing the cause of GHG reductions, cannot be justified. CARB's new GHG Housing Measures, facially and as applied to the housing sector in particular, are not supported by sound scientific analysis and are in fact counterproductive. CARB's new GHG Housing Measures establish presumptive legal standards under CEQA that currently impose, as a matter of law, costly new mitigation obligations that apply only to housing projects proposed now and in the future to meet

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[121] In addition, family wealth of homeowners has increased in relation to family wealth of renters over time and a homeowners' net worth is 36 times greater than a renters' net worth. Jesse Bricker, et al., Changes in US Family Finances from 2010 to 2013: Evidence from the Survey of Consumer Finances, 100 Fed. Reg. Bull. 4 (Sept. 2014), https://www.federalreserve.gov/pubs/bulletin/2014/articles/scf/scf.htm.

[122] *Id.* p. 75. Studies predict that the 2014-2016 dataset will show a wealth differential between homeowners and renters of 45 times. Lawrence Yun, *How Do Homeowners Accumulate Weath?*, Forbes (Oct. 14, 2015), https://www.forbes.com/sites/lawrenceyun/2015/10/14/how-do-homeowners-accumulate-wealth/#7eabbecd1e4b.

California's current shortfall of more than three million homes that experts and the Governor-elect agree are needed to meet current housing needs. Two specific examples are provided below.

263. By establishing a new "net zero" GHG CEQA significance threshold for all new projects, CARB has created a new legal obligation for such new projects to "mitigate" to a "less than significant" level all such GHG impacts. The California Air Pollution Control Officers Association ("CAPCOA"), which consists of the top executives of all of the local and regional air districts in California, has developed a well-established model for calculating GHG emissions from such new projects called The California Emissions Estimator Model ("CalEEMod").[123] This model is in widespread use throughout the state, and has been determined by the California Supreme Court to be a valid basis for estimating GHG emissions from residential projects for purposes of CEQA. *Newhall,* supra, 62 Cal.4th at 217-218.

264. CalEEMod calculates GHG emissions for 63 different types of development projects, including multiple types of residential projects. The scientific and legal framework of CalEEMod is the foundational assumption that all GHG project emissions are "new" and would not occur if the proposed project was not approved or built.

265. Within this overall framework, CalEEMod identifies GHG emissions that occur during construction (e.g., from construction vehicles and construction worker vehicular trips to and from the project site), and during ongoing project occupancy by new residents. GHG occupancy or "operational" emissions include GHG emissions from offsite electricity produced to serve the project, from onsite emissions of GHG from natural gas appliances, from on- and off-site GHG emissions associated with providing drinking water and sewage treatment services to the project, from vegetation removal and planting, and from vehicular use by project occupants on an ongoing basis. *See, e.g.*, Appendix A of CalEEMod[124]; South Coast Air Quality Management District User's Guide to CalEEMod[125].

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[123] Available at: http://www.caleemod.com/.

[124] CalEEMod Appendix A: Calculation Details for CalEEMOd, available at: http://www.aqmd.gov/docs/default-source/caleemod/caleemod-appendixa.pdf.

[125] CalEEMod User's Guide, available at: http://www.aqmd.gov/docs/default-source/caleemod/01_user-39-s-guide2016-3-2_15november2017.pdf?sfvrsn=4.

266. Under the CalEEMod CEQA compliance framework, if the project does not occur then the GHG emissions do not occur—notwithstanding the practical and obvious fact that people who cannot live in new housing they can afford must still live somewhere, where they will still engage in basic activities like consuming electricity, drinking water, and driving cars.

267. Under CEQA, a "significant" environmental impact is required to be "mitigated" by measures that avoid or reduce the significance of that impact by all "feasible" means. Pub. Res. Code § 21102. The CEQA Guidelines define "feasible" as "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal , social and technological factors." 14 C.C.R. § 15364.

268. The first of two examples of immediate and ongoing harm relates to the increased cost of housing caused by the "net zero" threshold. Before the 2017 Scoping Plan was approved, no agency or court had ever required a "net zero" GHG threshold. The only example of a residential project that met this target involved a voluntary commitment by the project applicant to a "net zero" project, in which 49% of the project's GHG emissions were "offset" by GHG reductions to be achieved elsewhere (e.g., funding the purchase of cleaner cook stoves in Africa) and paid for by higher project costs.

269. There is no dispute that funding these types of GHG reduction measures somewhere on Earth is "feasible" taking into account three of CEQA's five "feasibility" factors (environmental, social and technological). With housing costs already nearly three times higher in California than other states, home ownership rates far lower, and housing-induced poverty rates the highest in the nation, it remains possible – in theory – to demonstrate that in the context of a given housing project, adding $15,000-$30,000 more to the price of a home to fund the purchase of cleaner cook stoves in Africa, for example, would not be "legally" or "economically" feasible.

270. This theoretical possibility of demonstrating that any particular mitigation cost results in "economic infeasibility" has not succeeded, however, for any housing project in the nearly-50 year history of CEQA. A lead agency decision that a mitigation measure is infeasible must be supported by substantial evidence in the record—effectively the burden is placed on the project applicant to prove this latest "net zero" increment of mitigation costs is simply too

expensive and will make the project "infeasible." No court has found that a housing project has met this burden. *See, e.g.*, *Uphold our Heritage v. Town of Woodside* (2007) 147 Cal.App.4th 587. Further, this infeasibility evaluation applies to the applicant for the housing project, not prospective future residents—simply raising housing prices affordable only to wealthier buyers.

271. The CEQA mitigation criterion of legal infeasibility is likewise illusory when applied to the GHG mitigation measures required to achieve a "net zero" significance threshold. Although there is some judicial precedent recognizing that lead agencies cannot impose CEQA mitigation obligations outside their jurisdictional boundaries (e.g, in adjacent local jurisdictions), this precedent—like OPR's definitive regulatory conclusion that CEQA cannot be used to impose a "net zero" threshold even and specifically within the context of GHG—is directly challenged by the 2017 Scoping Plan, which cited with approval the one "net zero" GHG residential project that relied in part on offsite (off-continent) GHG reduction measures.

272. This "legal infeasibility" burden of proof also is extremely high under CEQA. For example, the California Supreme Court considered in *City of San Diego, et al. v. Board of Trustees of California State University* (2015) 61 Cal.4th 945, the University's "economic infeasibility" argument in relation to making very substantial transfer payments to local government to help fund local highway and transit infrastructure, which would be used in part by the growing student, faculty and staff for the San Diego campus. Although the Court acknowledged that the Trustees had expressly requested, and been denied, funding by the Legislature to help pay for these local transportation projects, the Court did not agree this was adequate to establish economic infeasibility under CEQA since the Trustees could have sought alumni donations or funding from other sources, or elected to stop accommodating new students in San Diego and instead grown other campuses with potentially lower costs. When CARB's "net zero" GHG measures are coupled with the "legal infeasibility" burden of proof, the result is a legal morass that frustrates the efforts of local governments to implement the Legislature's pro-housing laws and policies, to the detriment of under-housed minorities, including Petitioners.

273. The second example of immediate and ongoing harm is CARB's direct intervention in projects already in CEQA litigation by opining on the acceptable CEQA

mitigation for GHG emissions from fuel use, which typically create the majority of GHG emissions from new housing projects. In a long series of evolving regulations including most recently the 2018 adoption of new residential Building Code standards[126], and in compliance with the consumer protection and cost-effectiveness standards required for imposing new residential Building Code requirements established by the Legislature (Pub. Resources Code §§ 25402(b)(3), (c)(1); 25943(c)(5)(B)), California law requires new residences to be better insulated, use less electricity, install the most efficient appliances, use far less water (especially for outdoor irrigation), generate electricity (from rooftop solar or an acceptable alternative), and transition to future electric vehicles. These and similar measures have substantially reduced the GHG emissions from ongoing occupancy of new housing.

274. Under the CalEEMod methodology, however, gasoline and hybrid cars used by new residents are also counted as "new" GHG emissions attributed to that housing project – and these vehicular GHG emissions now account for the vast majority of a typical housing project's GHG emissions.[127]

275. In 2017, the Legislature expanded its landmark "Cap and Trade" program establishing a comprehensive approach for transitioning from fossil fuels to electric or other zero GHG emission technologies, which already includes a "wells to wheels" program for taxing oil and natural gas extraction, refinement, and ultimate consumer use.[128] CARB has explained that the Cap and Trade Program requires fuel suppliers to reduce GHG emissions by supplying low

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[126] See California Building Standards Commission, 2018 Triennial Code Adoption Cycle, available at: http://www.bsc.ca.gov/Rulemaking/adoptcycle/2018TriennialCodeAdoptionCycle.aspx. *See also* California Energy Code, California Code of Regulations, Title 24, Part 6; Building Energy Efficiency Standards (2019 update).

[127] In the Northlake project challenged in a comment letter citing noncompliance with the 2017 Scoping Plan discussed *supra* ¶ 42, for example, total project GHG emissions after mitigation were 56,722 metric tons, of which mobile sources from vehicles comprised 53,863 metric tons. Los Angeles County, Draft Supplemental EIR (May 2017), Table 5.7-3 (p. 5.7-26), available at https://scvhistory.com/scvhistory/files/northlakehills_deir_0517/northlakehills_deir_0517.pdf

[128] A.B. 398, 2017 (California Global Warming Solutions Act of 2006: market-based compliance mechanisms: fire prevention fees: sales and use tax manufacturing exemption).

carbon fuels or purchasing allowances to cover the GHG emissions produced when the conventional petroleum-based fuels they supply are burned.

276. Specifically, as part of the formal rulemaking process for the Cap and Trade Legislation, CARB staff explained in its *Initial Statement of Reasons for the Proposed Regulation to Implement the California Cap and Trade Program*, that:

> To cover the emissions from transportation fuel combustion and that of other fuels by residential, commercial, and small industrial sources, staff proposes to regulate fuel suppliers based on the quantifies of fuel consumed by their customers. … Fuel suppliers are responsible for the emissions resulting from the fuel they supply. In this way, a fuel supplier is acting on behalf of its customers who are emitting the GHGs … Suppliers of transportation fuels will have a compliance obligation for the combustion of emissions from fuel that they sell, distribute, or otherwise transfer for consumption in California. … [B]ecause transportation fuels and use of natural gas by residential and commercial users is a significant portion of California's overall GHG emissions, ***the emissions from these sources are covered indirectly through the inclusion of fuel distributers [in the Cap and Trade program]***."(emphasis added).[129]

277. CARB's express recognition of the fact that the Cap and Trade program "covers" emissions from the consumption of fossil fuels in the Cap and Trade regulatory approval process, in marked contrast with the challenged Housing Measures in the 2017 Scoping Plan, was subject to its own comprehensive environmental and economic analysis – which in no way disclosed, analyzed, or assessed the impacts of forcing residents of new housing to pay for GHG emission reductions from their fossil fuel uses at the pump (and in electricity bills) like their already-housed neighbors, and then paying *again – double-paying* – in the form extra GHG mitigation measures for the *same emissions*, resulting in higher housing costs.

278. The 2017 Scoping Plan likewise entirely omitted any analysis of the double-charging of residents of new homes for GHG emissions from the three million new homes the state needs to build to solve the housing crisis. Simply put, CARB should not now be permitted to use what purports to be only an "advisory" 2017 Scoping Plan to disavow and undermine its

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[129] CARB. October 2011. California's Cap-And-Trade Program Final Statement of Reasons, p. 2: https://www.arb.ca.gov/regact/2010/capandtrade10/fsor.pdf; (incorporating by reference CARB. October 28, 2010. Staff Report: *Initial Statement of Reasons for the Proposed Regulation to Implement the California Cap-and-Trade Program Part 1, Vol. 1,* pp. II-10, II-20, II-21, 11-53: https://www.arb.ca.gov/regact/2010/capandtrade10/capisor.pdf)

formal rulemaking statement for the Cap and Trade regulations, nor can CARB use this asserted "advisory" document to invent the new CEQA GHG mitigation mandates (and preclude use of Cap and Trade as CEQA mitigation) without going through a new regulatory process to amend its Cap and Trade program.

279. Whether compliance with Cap and Trade for fossil fuels used to generate electricity or power cars used by a particular project is an adequate mitigation measure for GHG under CEQA has been hotly contested in past and pending CEQA lawsuits. In *Newhall*, *supra*, 62 Cal.4th 204, one of the approved GHG compliance pathways for CEQA identified by the Court was compliance with applicable laws and regulations. That case was extensively briefed by numerous advocates (*see* Opening Brief on the Merits, *Center for Biological Diversity v. California Department of Fish and Game* (2015) 62 Cal.4th 204 (No. 5-S217763), and Consolidated Reply Brief, *Center for Biological Diversity v. California Department of Fish and Game*, (2015) 62 Cal.4th 204 (No. 9-S217763), which urged the Court to conclude as a matter of law that CEQA requires "additive" mitigation beyond what is otherwise required to comply with applicable environmental, health and safety laws.

280. Neither the appellate courts nor Supreme Court have imposed this novel interpretation of the GHG mandates imposed by CEQA as a newly discovered legal requirement lurking within this 1970 statute. As noted above, the Supreme Court declined to do so by expressly recognizing that compliance with law was one of several compliance "pathways" for addressing GHG impacts under CEQA. (*Newhall, supra,* 62 Cal.4th at 229). (*See also, Center for Biological Diversity et al. v. Department of Fish and Game* (2014) 224 Cal.App.4th 1105.)[130]

281. Consistent with this Supreme Court directive, and informed by both the Legislative history of the Cap and Trade program and by CARB's contemporaneous explanation that compliance with Cap and Trade is indeed the sole GHG mitigation required for fossil fuel use, several projects have mitigated GHG emissions from fossil fuel by relying on the legislated,

[130] This appellate court decision, which was reversed and remanded by the Supreme Court decision in the same case, is cited as evidence for the proposition that what constitutes adequate mitigation for GHG impacts under CEQA has been hotly contested in the courts.

and regulated, Cap and Trade program and similar legislative as well as regulatory mandates to reduce GHG emissions from fossil fuel. This has been accomplished through measures such as the Low Carbon Fuel Standards, which collectively and comprehensively mandate prescribed reductions in GHG emissions from fossil fuel use.

282. This approach has been expressly upheld by the Fifth District Court of Appeal in *Association of Irritated Residents v. Kern County Bd. of Supervisors* (2017) 17 Cal.App.5th 708 ("*AIR*"). Although the project at issue was a refinery source that was itself clearly included within the category of industrial operations directly regulated by the Cap and Trade Program, opponents challenged that project's reliance on the Cap and Trade program for non-refining GHG emissions such as GHG emissions produced offsite by the electricity producers that provided power to the consumer power grid, and by vehicles used by contractors and employees engaged in refinery construction and operational activities. *See, e.g.*, Appellants' Opening Brief, *AIR*, *5th Dist. Case No. F073892 (December 9, 2016) at 29 (arguing that "[c]ap-and-trade does not apply to greenhouse gas emissions from trains, trucks, and building construction . . . .") and at 34-35 (arguing that participation in the cap and trade program is inadequate mitigation for project emissions). The CEQA lead agency and respondent project applicant argued that reliance on Cap and Trade as CEQA mitigation was lawful and sufficient under CEQA. *See* Joint Respondents' Brief, *AIR*, 5th Dist. Case No. F073892 (March 10, 2017), at 52-56 (arguing that "The EIR Properly Incorporated GHG Emission Reductions Resulting From Cap-and-Trade In The Environmental Analysis").

283. The Fifth District concluded that compliance with the Cap and Trade program for the challenged project were adequate CEQA GHG mitigation. That case was then unsuccessfully challenged, and unsuccessfully petitioned for depublication, by numerous advocates that continued to assert that CEQA imposes an "additive" GHG mitigation obligation that could not be met by paying the higher fuel costs imposed by the Cap and Trade program.[131]

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[131] *See* Letter from CARB to City of Moreno Valley regarding Final Environmental Impact Report for World Logistics Center, available at: https://www.arb.ca.gov/toxics/ttdceqalist/logisticsfeir.pdf.

284. California already has the highest gasoline prices of any state other than Hawaii. CARB has consistently declined to disclose how much gasoline and diesel prices would increase under the 2017 Cap and Trade legislation. The non-partisan LAO completed an independent analysis of this question, and in 2017 concluded that under some scenarios, gasoline would increase by about 15¢ per gallon – and in others by about 73¢ per gallon. The LAO also noted that these estimated increases in gasoline prices "are an intentional design feature of the program."[132]

285. By using CEQA mitigation mandates created by the Scoping Plan to require only the disproportionately minority occupants of critically needed future housing to double-pay (both at the pump and in the form of higher housing costs imposed as a result of CEQA mitigation for the same fuel consumption), CARB has established a disparate new financial burden that is entirely avoided by those generally whiter, wealthier, and older Californians who have the good fortune of already occupying a home.

286. Both CARB and the Attorney General have acted in bad faith, and unlawfully, in their public description of and subsequent conduct regarding the immediate effectiveness and enforcement of the 2017 Scoping Plan.

287. First, in a written staff report distributed at the December 17, 2017 hearing at which the CARB Board approved the Scoping Plan, CARB staff misled the public and its Board by pretending that the challenged Housing Measures are simply not part of the Scoping Plan at all, and thus need not be considered as part of the environmental or economic study CARB was required to complete as part of the Scoping Plan approval process. This assertion flatly contradicted an earlier description of the immediately-implementing status of these Housing Measures made in a public presentation by a senior CARB executive.

288. Next, the Attorney General repeatedly advised this Court that the challenged Housing Measures were merely "advisory" and explained "the expectation that new measures proposed in the [Scoping] plan would be implemented through subsequent legislation or

[132] LAO, https://lao.ca.gov/letters/2017/fong-fuels-cap-and-trade.pdf.

regulations." (Memorandum of Points and Authorities in Support of Demurrer to Plaintiff's Verified Petition for Writ of Mandate, Case No. 18-CECG-01494 (August 31, 2018), p. 8:18-19 ("AG Memo")). The AG Memo argued that the disparate harms caused by such measures are not ripe because such subsequent implementing legislative or regulatory actions "have yet to be taken" (Reply Memorandum in Support of Defendants California Air Resources Board and Richard Corey's Demurrer to Plaintiffs' Verified Petition for Writ of Mandate *etc.*, Case No. 18-CECG-01494(October 16, 2018), p. 2:6-7 ("AG Reply Memo"), and that Petitioners' assertions that the challenged Housing Measures would result in litigation disputes aimed at stopping or increasing the cost of housing was "wildly speculative" (AG Memo, p. 10:7). Further the Attorney General argued that the 2017 Scoping Plan "cannot be reasonably viewed as providing a valid basis for filing suit under CEQA." (AG Memo, p. 14:15) The same arguments were advanced in this Court's hearing on October 26, 2018.

289. Meanwhile, however, and virtually simultaneously with making contrary assertions to this Court, both the Attorney General and CARB were filing comment letters (precedent to CEQA lawsuits), and the Attorney General filed an amicus brief in a CEQA lawsuit, to challenge the legality of a CEQA lead agency's mitigation measure (in one case) and proposed General Plan element approval (in another case) *based on alleged failure to comply with applicable Housing Measures in the Scoping Plan.*

290. CARB's (and the Attorney General's) claims that the 2017 Scoping Plan is merely "advisory" and that its future effects are merely "speculative" (as well as its express denial at the December 2017 hearing on the 2017 Scoping Plan that the four challenged GHG Housing Measures are even part of the Plan), have been belied by the actual use of the 2017 Scoping Plan by CARB and the Attorney General themselves, as well as by third party agencies and anti-housing project CEQA litigants. Among the recent examples of the use of the Scoping Plan are the following:

A. **CARB September 7, 2018 Comment Letter:** Before even completing its Demurrer briefing to this Court, on September 7, 2018, CARB filed a comment letter criticizing the revised Final Environmental Impact Report for the World

Logistics Center project. A copy of this letter can be found at https://www.arb.ca.gov/toxics/ttdceqalist/logisticsfeir.pdf. CARB's comment letter opines that as an absolute and unambiguous matter of law, compliance with the Cap and Trade program is not a permissible mitigation under CEQA. CARB's comment dismisses as "novel" the contention that compliance with laws and regulations requiring reductions in GHG can be, and is in fact, a permissible and legally sufficient mitigation measure under CEQA. Strikingly, CARB's letter simply ignores the *Newhall* decision. As for the Fifth District's on-point decision in *AIR*, CARB's letter states (at p. 11, note 23) that, "*[i]n CARB's view this case was wrongly decided as to the Cap-and-Trade issue . . . .*" Thus, CARB in its public comments is urging permitting agencies to *disregard* court decisions on GHG issues and instead to follow CARB's supposedly "advisory" Scoping Plan policies, which it cites extensively . This type of CEQA "expert agency" letter can be used by the agency itself, if it chooses to file a lawsuit against an agency approving a project in alleged noncompliance with CEQA, or it can be used for its evidentiary value (and expert agency opinions are presumptively entitled to greater deference) by any other third party filing a CEQA lawsuit against that project, or even in another lawsuit raising similar issues provided that the CARB comment letter is submitted in the agency proceeding that is targeted by such second and subsequent lawsuits.

B. **Attorney General's September 7, 2018 Comment Letter:** Also on September 7, 2018, the Attorney General ("AG") joined CARB in criticizing the World Logistics Project's GHG analysis in a comment letter that prominently featured the 2017 Scoping Plan. A copy of this letter can be found at https://oag.ca.gov/sites/all/files/agweb/pdfs/environment/comments-revised-sections-feir.pdf. Like CARB, the AG relied on the Scoping Plan to measure the adequacy of GHG measures under CEQA. Also like CARB, the AG sought to sidestep the Fifth District's *AIR* decision, but did so "[w]ithout commenting on

whether or not that case was rightly decided" in the AG's opinion (p. 6). The Attorney General's comment letter relies on the 2017 Scoping Plan in opining that "CEQA requires" the CEQA lead agency to "evaluate the consistency of the Project's substantial increases in GHG emissions with state and regional plans and policies calling for a dramatic reduction in GHG emissions" The AG goes on to conclude that the lead agency engaged in a "failure to properly mitigate" impacts as required by CEQA because the project's "increase in GHG emissions conflicts with the downward trajectory for GHG emissions necessary to achieve state climate goals." The AG again cites the 2017 Scoping Plan text in explaining that, unless they mandate CEQA GHG mitigation measures that go beyond compliance with applicable GHG reduction laws and regulations, "local governments would . . . not be doing their part to help the State reach its ambitious, yet necessary, climate goals." [AG letter at p. 7-11]

C. **Attorney General's November 8, 2018 Amicus Filing:** A third example is provided by the AG's November 8, 2018 filing of an "Ex Parte Application of People of the State of California for Leave to File Amicus Curiae Brief in Support of Petitioners" in *Sierra Club, et al. v. County of San Diego* (Nov. 8, 2018) No. 37-2018-00014081-CU-TT-CTL (San Diego Superior Court). A true copy of this Ex Parte Application and accompanying AG memorandum is attached hereto as **Exhibit 1**. A copy of the underlying Sierra Club petition, into which the AG has sought to inject the Scoping Plan, is attached hereto as **Exhibit 2**. In the amicus filing (Exhibit 1), the Attorney General asserts that he "has a special role in ensuring compliance with CEQA", and that he "has actively participated in CEQA matters raising issues of greenhouse gas ("GHG") emissions and climate change." (Application at 3:16, 24-25.) The challenged San Diego County Climate Action Plan actually includes and requires implementation of the 2017 Scoping Plan's "recommended" Net Zero GHG CEQA threshold for new projects, but was nevertheless challenged in this lawsuit the grounds that it did not also mandate a

reduction in Vehicle Miles Traveled because it allowed the County to approve new housing projects that fully mitigated ("Net Zero GHG") all GHG emissions but still resulted in an increase in VMT from residents living in this critically needed new housing. Petitioners in the consolidated proceedings in this case have claimed that based on the state's climate laws including the 2017 Scoping Plan, the County could not lawfully approve any amendment to its General Plan to accommodate any of the state's three million home shortfall unless such housing was higher density (e.g., apartments) and located inside or immediately adjacent to existing urban areas served by transit, because only that type of housing and location could result in the required reduction in VMT. Petitioners in these cases further identified the pending housing projects they believed could not be approved by the County. Petitioners sought (and obtained) injunctive relief to prevent such housing projects from relying on this "Net Zero" GHG Climate Action Plan as allowed by one of the CEQA compliance pathways identified by the Supreme Court in its *Newhall* decision, and identified by the Legislature itself in CEQA compliance provisions set forth in SB 375. In his amicus brief, the Attorney General repeatedly cites CARB's 2017 Scoping Plan as the legal basis for a new mandate that allegedly prohibits San Diego County (and all other counties) from meeting any part of the housing shortfall with more traditional homes (e.g., small "starter" homes and duplexes, which cost less than a third to build than higher density apartment units), or from locating these new homes anywhere other than an existing developed city or unincorporated community. The Attorney General also falsely argues that VMT reductions are mandated by other state laws; however, no law enacted by the California Legislature mandates any VMT reduction, and the Legislature has repeatedly rejected enacting such a mandate.[133]

[133] The Attorney General further argues that VMT reductions are required by SB 375, which is designed to reduce GHG (not VMT) with land use and transportation plans, even though SB 375 specifically directs CARB to develop compliance metrics and CARB has

291. CARB cannot have it both ways: it cannot coyly claim that the 2017 Scoping Plan is merely "advisory" and then fire into the end of a second round of CEQA documentation for a single project a new legal conclusion that upends the published judicial precedents of our courts. The AG similarly cannot assure this Court that it is "wildly speculative" for a CEQA lawsuit to be filed in reliance on the challenged measures in the 2017 Scoping Plan, and then six days later file an amicus in a CEQA lawsuit that does just that. If CARB wants to change Cap and Trade laws and regulations, and other GHG reduction laws and regulations applicable to fossil fuels, to make those not already fortunate enough to have housing pay both at the pump, and in their down-payment/mortgage and rent check, for "additive" GHG reductions above and beyond what their more fortunate, generally whiter, wealthier and older well-housed residents have to pay, then that is first and foremost a new mandate that can only be imposed by the Legislature given direct court precedent on this issue.

292. If such a mandate were proposed by the Legislature, a full and transparent debate about the disparate harms such a proposal would confirm that those most affected by the housing crisis, including disproportionately our minority communities, would suffer the equivalent of yet another gasoline tax on those least able to pay, and most in need of new housing. Petitioners are confident that the Legislature would not approve such a proposal.

293. Even these few examples of direct CARB and Attorney General implementation actions of the 2017 Scoping Plan to require more mitigation or block new housing demonstrate the immediate and ongoing harm of the 2017 Scoping Plan's challenged Housing Measures, which CARB and the Attorney General have opined impose higher CEQA "mitigation" costs on housing under a "net zero" GHG mitigation framework, and block otherwise lawful new housing altogether under the Scoping Plan's "VMT reduction" framework. The harms caused by these Housing Measures is not "wildly speculative"— they are already underway. They already disproportionately affect California minority communities not already blessed with wealth and

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itself repeatedly declined to require VMT reduction compliance metrics under SB 37 as late as December of 2017 and March of 2018.

homeownership, and they are already the subject of both administrative and judicial proceedings. They are properly and timely before this Court. The following paragraphs provide additional evidence of ripeness in the context of the three other challenged Housing Measures, beyond the "Net Zero" GHG threshold and corresponding mitigation mandates described above.

294. The 2017 Scoping Plan's new numeric thresholds for local climate action plans present similarly immediate and ongoing harms to Petitioner/Plaintiffs. In its *Newhall* decision, the California Supreme Court concluded that one of the "pathways" for CEQA compliance was designing projects that complied with a local Climate Action Plan ("CAP") having the then-applicable GHG statutory reduction mandate of reducing GHG emissions to 1990 levels by 2020.

295. Housing projects that complied with a local CAP had been duly approved by the same local governments responsible for planning and approving adequate housing for our minority communities. This provided a judicially streamlined pathway for GHG CEQA compliance for housing. Local CAPs include community-scale GHG reduction strategies such as pedestrian, bicycle and transit improvements that are beyond the ability of any single housing project to invent or fully fund, and thus CAP compliance is a known and legally-defensible CEQA GHG compliance pathway. The Scoping Plan destroyed that pathway, and accordingly caused and is causing immediate harm to new housing projects that could otherwise rely on the CAP compliance pathway for CEQA.

296. There is no statutory obligation for a city or county to adopt a CAP, nor are there any regulations prescribing the required contents of a CAP; instead, a CAP's primary legal relevance to proposed new housing projects occurs within the CEQA compliance context.

297. There has been a flurry of unresolved and ongoing CEQA interpretative issues with respect to CAPs that have been and remain pending in courtrooms throughout California. For example, in the City of San Diego and the County of Sonoma, multi-year lawsuits have resulted in two judicial decisions that make clear that any jurisdiction electing to voluntarily approve a CAP must assure that the CAP has clear, adequate and enforceable measures to achieve the GHG reduction metric included in the CAP. *See Sierra Club v. County of San Diego* (2014) 231 Cal.App.4th 1152; *California Riverwatch v. County of Sonoma* (July 20, 2017) Case No.

SCV-259242 (Superior Court for the County of Sonoma)[134]; *see also Mission Bay Alliance, et. al. v. Office of Community Investment and Infrastructure, et. al.* (2016) 6 Cal.App.5th 160 (upholding the adequacy of a CAP as CEQA compliance for a new professional sports facility).

298. The new numeric GHG per capita metric that the 2017 Scoping Plan prescribes as the presumptively correct GHG reduction target for CAPs places the entire burden of achieving the state's legislated 40% reduction target by 2030, and the unlegislated 80% reduction target by 2050, on local governments, with for example a numeric GHG reduction target of 2 tons per person per year by 2050. However, as the 2017 Scoping Plan itself makes clear, the vast majority of GHG emissions derive from electric power generation, transportation, manufacturing, and other sectors governed by legal standards, technologies, and economic drivers that fall well beyond the land use jurisdiction and control of any local government. The Scoping Plan does not even quantify the GHG reductions to be achieved by local governments, in their voluntary caps or otherwise: it seeks to define and achieve the state's GHG reduction mandates with measures aimed at specific GHG emission sectors.

299. The 2018 San Diego County CAP, adopted after the County lost its first CEQA lawsuit, adopts both CARB's numeric GHG targets—and the mandate that new housing projects entirely absorb the additional cost of fully offsetting GHG emissions in compliance with the "net zero" standard by paying money to fund GHG reduction projects somewhere on earth. The San Diego CAP both proves the immediacy of the disparate mitigation cost harms of the Scoping Plan's imposition of even higher costs to housing critically needed by California's minority communities, and provides a case study in the anti-housing legal morass created by the 2017 Scoping Plan's ambiguous—and unexamined from an equity, environmental, economic disclosure or public review process—new CEQA "net zero" threshold and CAP per capita numeric standards.

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[134] The trial court order in *California Riverwatch v. County of Sonoma* is cited herein as evidence for the existence of CEQA litigation challenges to local climate action plans and not as legal precedent. The order is available at: http://transitionsonomavalley.org/wp-content/uploads/2017/07/Order-Granting-Writ-7-20-17.pdf.

300. San Diego County faces its third round of CAP litigation (with the prior two rounds still ongoing in various stages of judicial remand and review) in a lawsuit filed in 2018, in which the same group of petitioners allege that the County again failed to include sufficient mandatory measures to achieve the 2017 Scoping Plan per capita GHG reduction metric because it continued to allow new housing to be built if offsetting GHG reductions were funded by the housing project in or outside the County. A copy of one such lawsuit (consolidated with others) is attached for reference as Exhibit 2. This lawsuit seeks a blanket, County-wide writ of mandate that would block "processing of permits for development projects on unincorporated County lands" unless these new housing-blocking measures are included. (See Exhibit 2 at p. 17:3-7.) The petitioners in these consolidated cases against San Diego County have further made clear that their ongoing objections to the County's CAP were so severe that they had also been compelled to file CEQA lawsuits *against individual housing projects*, and in their lawsuit, they have included a list of nearly a dozen pending housing projects that in their judgment should not be allowed to proceed. As described above, the Attorney General filed a request for leave to file an amicus brief in this case, accompanied by an amicus brief. See Exhibit 1. Based on CARB's 2017 Scoping Plan, the AG has sought to bolster to the petitioners' anti-housing CEQA lawsuits, including their claims that designated housing projects in unincorporated San Diego County cannot lawfully be approved or built based on VMT impacts, even if all GHG impacts are mitigated to "net zero."

301. This CEQA morass of extraordinary GHG reduction costs imposed only on residents of newly constructed housing, with still pending and unresolved CEQA lawsuit challenges against the CAP and specific housing projects, for GHG reductions that are not even quantified, let alone critical to California's climate leadership, is itself an ample demonstration of the disparate harms of CARB's poorly-conceived and discriminatory GHG Housing Measures.

302. The Scoping Plan's VMT reduction measure is likewise causing immediate, ongoing, and disparate harm to California's minority communities who are forced to drive ever-greater distances to find housing they can afford to buy or rent. As in the case of local climate action plans, there is no statewide statutory or regulatory mandate for reducing VMT. The

Legislature considered and rejected imposing a VMT reduction mandate, and CARB considered and rejected imposing a VMT reduction mandate as part of the regional land use and transportation planning mandated under SB 375 (first postponing its decision in December of 2017, at the same hearing CARB approved the Scoping Plan – and then definitively rejecting it in March of 2018).

303. At these hearings, CARB was informed that VMT had increased in California while transit utilization had fallen dramatically notwithstanding billions of dollars in new transit system investments. VMT reduction thus could not appropriately be included as SB 375 compliance metrics and with increases in electric and high efficiency hybrid vehicles, the correlation between VMT and GHG emissions is increasingly weak.

304. Even more than CARB's other GHG Housing Measures, the VMT reduction mandate is uniquely targeted to discriminate against minority workers. The American Community Survey ("ACS") is a project of the U.S. Census Bureau and tracks a wide range of data over time—including the ethnicity, transportation mode, and times of California commuters. The ACS data demonstrate that in the 10 year period between 2007 and 2016, 1,117,273 *more* Latino workers drove to their jobs, 377,615 *more* Asian workers drove to their jobs, and 18,590 *more* African American workers drove to their jobs.[135] During the same period, 447,063 *fewer* white workers drove to their jobs. Transit utilization increased for white and Asian workers, but fell for Latino and African American workers. During the same period, commute times lengthened substantially as more people—again disproportionately minorities—were forced to commute longer distances to housing they could afford.

305. By 2016, about 445,000 people in the Bay Area were commuting more than an hour each direction—an increase of 75% over the 2006 count of long distance Bay Area commuters. Anyone driving between the Bay Area and Central Valley during commute times vividly experiences the gridlock conditions, adverse personal health (e.g., stress, high blood

[135] David Friedman, Jennifer Hernandez, California, Greenhouse Gas Regulation, and Climate Change, Holland & Knight, Chapman University Press (2018), Table 3.7, p. 84, https://www.chapman.edu/wilkinson/_files/ghg-fn.pdf.

pressure, back pain), and adverse family welfare (e.g., missed dinners, homework assistance, and exhaustion) consequences of these commutes.

306. CARB (and the Attorney General) also have no support for their argument disputing the fact that the challenged Housing Measures disproportionately affect minority community members. As early as 2014, CARB received a comprehensive report from NextGen, a firm closely aligned with the strongest supporters of California's climate leadership, urging CARB to restructure its electric car subsidy program, which was found to be disproportionately benefitting those in Marin County and other wealthier and whiter areas that could afford to purchase costly new electric vehicles. In "No Californian Left Behind," Next Gen noted the obvious: "the overwhelming majority of Californians still use cars to get to work," including 77% who commute alone and 12% who carpool. Further, "[i]n less densely developed and rural areas like California's San Joaquin Valley, commuters often have long distances to drive between home, school, work and shopping; as a result, car ownership is often not a choice, but a necessity." Even more specifically, the report found that in Fresno County, even for workers earning less than $25,000, fewer than 3 percent of commuters take public transportation to work; in Madera County, only 0.3% of low-income workers took transit, and the results were comparable in in the rest of the San Joaquin Valley. Next Generation, *No Californian Left Behind: Clean and Affordable Transportation Options for all through Vehicle Replacement*, *http://www.thenextgeneration.org/files/No_Californian_Left_Behind_1.pdf (February 27, 2014) at p. 9. NextGen advocated a restructured vehicle program designed to equitably retire and replace the oldest most polluting cars, and to shift subsidy and incentive programs to help those who are either low income or need rural transport to obtain cleaner, lower-GHG emitting cars. (*Id.* p. 5) NextGext noted:

> "California is already a leader in advanced and high tech transportation and transit solutions. It is time we also became a leader in pragmatic solutions for a population that is sometimes left behind in these discussions: non-urban, low-income, car-dependent households."

The VMT reduction mandate in the 2017 Scoping Plan was specifically identified as CARB was fully on notice of the disparate harms caused to minority communities by its approach. In a report submitted to CARB by the climate advocacy group NextGen in February 2014, CARB was informed that Central Valley Latinos drive longer distances than any other ethnic group in any other part of California—and live in communities and households with the highest poverty rates.

307. Notwithstanding CARB's express acknowledgement in March of 2018 (and preview in December of 2017) that even the regional transportation and housing plans required by SB 375 cannot attain a VMT reduction target, CARB and its fellow "Vibrant Communities Appendix" agencies, remain committed to using CEQA to require new projects—including housing that is affordable and critically needed for California's minority communities—to pay higher costs to fund VMT reductions through CEQA.

308. As with the "net zero" GHG mitigation mandate, the immediate and ongoing effect of this VMT reduction measure is to increase housing costs to even less affordable and attainable levels for California's minority communities.

309. Even before enactment of the 2017 Scoping Plan, OPR (the Vibrant Communities agency that has the responsibility for adopting regulatory updates to CEQA) had been proposing to regulate the act of driving a car (even an electric vehicle or carpool) one mile (one VMT) as a new CEQA "impact" requiring "mitigation"— independent of whether the mile that was driven actually caused any air quality, noise, GHG, safety, or other impacts to the physical environment.

310. This expansion of CEQA was prompted in 2013, when OPR was directed by the Legislature in SB 743 to adopt a metric other than congestion-related traffic delay in transit-served "infill" areas as the appropriate transportation impact required to be evaluated and mitigated under CEQA, since these neighborhoods were intentionally being planned for higher density, transit/bike/pedestrian rather than automobile-dependent, neighborhoods. Pub. Res. Code § 21099(b).

311. In SB 743, the Legislature authorized but did not require the state Office of Planning and Research (OPR) to use VMT as the replacement metric for transit-served areas, and authorized but did not require OPR to apply an alternate transportation impact metric outside

designated urban infill transit neighborhoods. OPR responded with three separate rounds of regulatory proposals, each of which proposed expanding CEQA by making VMT a new CEQA impact, and requiring new mitigation to the extent a VMT impact was "significant." OPR further proposed a series of VMT significance thresholds, analytical methodologies, and potential mitigation measures, which varied over time but included a "road diet" and measures to discourage reducing congestion, on the theory that such congestion could somehow "induce" transit use and VMT reductions.

312. Under all three sets of OPR proposals, projects would be required to do more mitigation to reduce significant VMT impacts—by reducing VMT (i.e., reducing GHG or other air pollutants is not a valid CEQA mitigation approach for a new VMT impact). OPR received scores of comments objecting to expanding CEQA by making driving a mile a new "impact" requiring "mitigation," particularly given the disparate impact such a metric has on minority communities and the many adverse impacts to the environment, and public health and welfare, caused by the housing crisis and the state's worst-in-the-nation commutes.

313. OPR, again and repeatedly citing to the asserted need to reduce VMT to meet California's GHG reduction and climate leadership commitments, held a recent round of workshops on VMT mitigation strategies, working in close coordination with CARB's earlier and since-abandoned proposal to include VMT reductions as a required SB 375 regional transportation plan compliance measures.

314. At these workshops, OPR and its outside experts from an Oregon university conceded that VMT could likely not be "mitigated" by reducing miles driven by the future residents of any particular housing project (e.g., by adding secure bike racks or charging extra for parking), since whether people drive a mile or call an Uber—or hop on a bike or bus—is a function of available, cost- and time-effective transportation modes as well as the incomes and planned destinations of future residents. Agency workshop participants expressly acknowledged that VMT had increased 6% over 2011 levels, even though California's primary climate statutes (including many programs designed to promote transit and higher density development, and many

billions of dollars in completed transit systems improvements) were in effect during this same period.

315. These experts also conceded that with the success of on-demand ride services like Uber and Lyft, including the increasing cost-effectiveness and popularity of voucher-based on-demand rides by transit agencies in lieu of operating fixed route buses with low and still-declining utilization levels, there was *no evidence* that VMT could be substantially reduced by a particular project in a particular location as part of the CEQA review process for that project.

316. Instead, the VMT mitigation proposals shared during the workshops required that new housing pay others to operate school buses, bikeshare, and make improvements to bike and pedestrian pathways to the extent these measures could be demonstrated to reduce VMT. The suggested VMT mitigation measures had in common the payment of substantial fees (with some options suggested requiring annual payments, in perpetuity, of $5000 per apartment or home).

317. A recent academic study of VMT mitigation under CEQA likewise concedes the difficulty of a particular project achieving VMT reductions, and endorses the concept of adding to housing and other project costs payments to VMT "banks" or "exchanges" to fund third party VMT reductions – VMT reductions that occur somewhere, by someone.

318. This OPR VMT saga, like CARB's ultimate decision not to require a VMT compliance metric under SB 375, further demonstrates that the 2017 Scoping Plan's VMT reduction mandate measure – which CARB's senior executive expressly acknowledged was intended to be "self-executing" - is a fundamentally flawed "throw-away" measure that was neither acknowledged nor given an equity, environmental, or economic evaluation before being included in CARB's 2017 Scoping Plan.

319. The last of the challenged GHG Housing Measures is the Vibrant Communities Appendix, in which eight state agencies (including OPR) join with CARB in committing to undertake a series of actions to implement the approved Scoping Plan. Some of these agencies already have begun implementing the Scoping Plan, to the immediate and ongoing harm of California minority communities who are already disproportionately suffering from the housing crisis.

320. The Vibrant Communities appendix is an "interagency vision for land use, **and** for discussion" (emphasis added) of "State-Level Strategies to Advance Sustainable, Equitable Communities and Reduce Vehicles Miles of Travel (VMT)." 2017 Scoping Plan Appendix C, p. 1.

321. **First,** all of disparate and unlawful current and ongoing harms described in connection with the Scoping Plan's VMT Reduction measure apply equally to the actions of other State agencies based on the Vibrant Communities appendix measures. None have a rational basis for claiming any actual success in reducing VMT through their respective direct regulatory activities.

322. **Second,** there is no constraint in the "Vibrant Communities Appendix" preventing any of the eight state agency signatories from taking immediate steps to directly enforce these "land use" policies, while claiming to "work together to achieve this shared vision and to encourage land use and transportation decisions that minimize GHG emissions." 2017 Scoping Plan Appendix C, p. 2.

323. OPR's VMT expansion of CEQA, discussed above, is an example of an agency action to reduce VMT and GHG that is at least subject to formal rulemaking procedures and is thus not yet being "implemented."

324. In contrast, in June of 2018, a combination of four Vibrant Communities Appendix implementing agencies joined by one other agency[136] announced that they would henceforth implement – without benefit of any further Legislative or regulatory action –the "December 2017 Scoping Plan directive". This announcement was made at the San Francisco Bay Area Regional Meeting announcing the "California's 2030 Natural and Working Lands Climate Change Implementation Plan." Consistent with the anti-housing bias built into CARB's GHG Housing Measures, these agencies collectively promised to avoid "conversion of land for development."

[136] The five agencies are: the California Environmental Protection Agency, the California Natural Resources Agency, CARB, the California Department of Food and Agriculture, and the Coastal Conservancy.

325. These five agencies made no exception for developing housing, even for housing that CARB has already concluded as part of the SB 375 regional plan process meets California's legislated GHG emission reduction requirements. These agencies likewise made no exception for transportation or other critical infrastructure, even if consistent with local and regional plans, even if approved by federal or state agencies other than this five-agency consortium, even if within an approved city limit, and even if approved by voters. *Simply put, these agencies – which have combinations of funding, permitting, planning and enforcement obligations – have signaled that they are not going to approve new development on land that is not already developed.*

326. The sole reed upon which this vast new legal prohibition rests is the 2017 Scoping Plan, and more specifically the Vibrant Communities Appendix. See SF Bay Area Regional Meeting, *California's 2020 Natural and Working Lands Climate Change Implementation Plan*, available at http://resources.ca.gov/wp-content/uploads/2018/08/SF-Bay-Area-NWL-meeting-presentation-6.18.pdf.

327. Less than 6% of California is urbanized, and each city and county is charged by state law with adopting a General Plan that must accommodate the housing, transportation, and infrastructure needs of its existing and planned future residents. Under SB 375, these local land use plans are effectively consolidated into regional transportation and land use plans that must accommodate future population and economic growth as well as meet CARB targets for reducing GHG from the land use sector. Every regional Sustainable Communities Strategy ("SCS") plan includes some combination of housing, infrastructure (including transportation improvements), schools and other land uses that are carefully and deliberatively sited within each jurisdiction's boundaries – and adopted only after each local government first complies with CEQA and completes an extensive public notice, comment, and hearing process before appointed and elected officials.

328. The decision of the California Department of Fish & Wildlife ("CDFW") to simply stop issuing permits for housing and related infrastructure projects that have already been approved by local elected officials, after community input, in compliance with all applicable laws—and have further already been approved by CARB, as part of the SB 375 regional plan

approval process—is a blatant example an announced harm being committed against housing by a state agency in furtherance of CARB's 2017 Scoping Plan.

329. **Third**, consistent with normal practice for lawsuits that include a claim that the respondent agency has failed to comply with CEQA, Petitioners elected to prepare the administrative record that is relevant to the disposition of this CEQA cause of action. The Legislature has specifically prescribed the content of the CEQA administrative record, which includes in part: "Any other written materials relevant to the respondent public agency's compliance with this division or to its decision on the merits of the project" and "all . . . internal agency communications, including staff notes and memoranda relating to the project." Pub. Res. Code § 21167.6(c)(10).

330. Petitioners timely sought the administrative record from CARB, and in another normal practice for CEQA lawsuits submitted requests filed under the California Public Records Act ("CPRA") to each of the Vibrant Communities Appendix agencies in relation to each agency's Scoping Plan and Vibrant Communities Appendix, and VMT or other Scoping Plan documents.

331. Many months later, only incomplete responses have been provided by CARB (which sought to limit the administrative record in this case to select excerpts from its Scoping Plan docket).

332. Several of the Vibrant Communities Appendix agencies, including CDFW, OPR, parent and affiliated agencies of each (Natural Resources Agency and Strategic Growth Council), and CalSTA, responded with minimal documents and instead asserted that the requested documents were exempt from disclosure under the CPRA because they could result in public "controversy."

333. One of these partially-responsive agencies admitted that the withheld documents involved the highest level of state government, and included legislative proposals. All of these partially-responsive agencies declined a second letter request to disclose the withheld documents, or provide a privilege log describing each withheld document and the reason for its concealment.

334. There is no centralized or otherwise public repository of Vibrant Communities Appendix agency documents that disclose to the public their current, planned, or future activities with respect to implementing the Scoping Plan. There is likewise no centralized or otherwise public repository of which implementing activities are being (or will be) directly undertaken, and which will not be undertaken without future rulemaking or authorizing legislation.

335. From just the "direct" implementation activities noted above—and in particular CARB's intervention in an ongoing CEQA project-level review to opine on GHG mitigation requirements in a manner that is contrary to published judicial opinions, and CDFW's announced intention to cease authorizing activities that would convert land to development with no exception for new housing or related infrastructure that is already included in approved General Plans, infrastructure plans, voter-approved bonds, or CARB-approved Sustainable Communities Strategies implementing SB 375, is ample evidence of the immediate and ongoing new costs and regulatory obstacles already being imposed by these agency Scoping Plan implementing actions.

336. CARB's GHG reduction compliance metric is arbitrary, not supported by science, has no rational basis, and is racially discriminatory. In California's GHG and climate leadership laws, the Legislature did not prescribe any specific measurement methodology or compliance metric for meeting California's GHG reduction goals. The methodology and metrics that CARB has chosen completely ignore massive GHG emissions that occur when California's forests burn, as has tragically occurred at a large scale for several of the past years, notwithstanding estimates that just one major forest fire wipes out an entire year of GHG reductions achieved by CARB's regulatory actions.[137]

337. Similarly, CARB does not count—or require reductions of—GHG emissions associated with imported foods or other goods, or with a multitude of other activities such as airplane trips. However, every time a California resident (or job) leaves California, CARB counts that as a GHG reduction—even though the top destinations for the hundreds of thousands of

[137] David Friedman, Jennifer Hernandez, California, Greenhouse Gas Regulation, and Climate Change, Holland & Knight, Chapman University Press (2017), p. 60-61, https://www.chapman.edu/wilkinson/_files/ghg-fn.pdf.

Californians who have migrated to lower cost states in recent years, notably including Texas, Arizona and Nevada—have per capita GHG emissions that are more than double the emissions those same individuals would have if they remained in California.

338. Climate change and GHG emissions are a global challenge, and nearly tripling the GHG emissions of a California family that needs to move to Texas or Nevada to find housing they can afford to rent or buy, increases global GHG.

339. It may be that there are other environmental priorities favored by CARB and its allies that justify policies that are in fact resulting in the displacement and relocation of California's minority communities, that reduce the state's population, and that eliminate higher energy production jobs like manufacturing that traditionally provided a middle class income (and home ownership) to a hard worker without a college degree. These discriminatory anti-minority policies cannot, however, be scientifically, politically, or legally justified in the name of global reductions of GHG.

340. CARB's International Policy Director on climate, former Obama administration senior climate team Lauren Sanchez, admitted that the GHG reduction metrics used by CARB – that simply and completely ignores the increased global GHG emissions from forcing Californians to live in high GHG states to find housing they can afford to buy with commute times that did not damage driver health, family welfare, and the environment - were "flawed" at the recent (October 2018) Environmental Law Conference in Yosemite. This admission rebuts the politically shocking and legally invalid assertion that it is constitutional for CARB to implement racially discriminatory measures (because CARB's discriminatory objective is merely to force minority Californians to either try to live in housing they cannot afford located nowhere near their job, or migrate to another state).

341. The 2017 Scoping Plan is required to reduce California's share of *global* GHG emissions, but it completely ignores massive emission sources that are controversial within the environmental community (e.g. managing California's massive wildfire risks which result in GHG emissions that dwarf CARB's regulatory GHG reductions, based on what the non-partisan

Little Hoover Commission reported in February 2018 as a century of forest mismanagement including clashes between environmental agencies). [138]

342. The 2017 Scoping Plan also completely ignores other massive GHG emissions attributed to the behavior of wealthier Californians (e.g., airplane rides, and consumption of costly imported consumer products).[139] Instead, as summarized a Chapman University Research Brief, CARB has administered California's climate laws with actions such as the 2017 Scoping Plan that drive up the fundamental costs of living for ordinary Californians—housing, electricity, transportation—and thereby drive more people (and disproportionately minorities) into poverty, and out of the state.[140]

343. The 2017 Scoping Plan fails even the most rudimentary "rational basis" constitutional test, and it is being implemented today by organizations and agencies including CARB that are driving up housing costs and blocking housing projects today. To cause this much pain and hardship to this many people, and to place the greatest burdens on those already disparately harmed by the housing crisis, is unconscionable. It is also ongoing, illegal, and unambiguously intentional, for CARB to impose these "flawed" GHG reduction metrics that cause disparate harms to racial minorities living in California.

344. The foregoing paragraphs describe agency actions that are exacerbating the State's extreme poverty, homelessness and housing crisis while *increasing* global GHG emissions by driving Californians to higher per capita GHG states.[141]

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[138] Little Hoover Commission, *Fire on the Mountain: Rethinking Forest Management in the Sierra Nevada* (February 2018), available at https://lhc.ca.gov/report/fire-mountain-rethinking-forest-management-sierra-nevada.

[139] Bay Area Air Quality Management District and Cool Climate Network at UC Berkeley, *Consumption-Based GHG Emissions Inventory: Prioritizing Climate Action for Different Locations* (December 15, 2015), available at https://escholarship.org/uc/item/2sn7m83z

[140] Friedman, Id., Summary at p. 7-9.

[141] Philip Reese, *California Exports Its Poor to Texas, Other States, While Wealthier People Move In*, The Sacramento Bee (Mar. 5, 2017), available at http://www.sacbee.com/news/state/california/article136478098.html; Drew Lynch, *Californians Consider Moving Due to Rising Housing Costs, Poll Finds*, Cal Watchdog (Sept. 21, 2017), available at https://calwatchdog.com/2017/09/21/californians-consider-moving-due-rising-

345. CARB's new GHG Housing Measures, individually and collectively, on their face and as applied, deprive Petitioners, including but not limited to RODRIGUEZ, MURILLO and PEREZ, and other historically-disadvantaged minorities, of the fundamental right to live in communities that are free from arbitrary, government-imposed standards whose inevitable effect is to perpetuate their exclusion from participation in the housing markets in or near the communities in which they work. CARB's new GHG Housing Measures, individually and collectively, on their face and as applied, have a disparate adverse impact on Petitioners, including but not limited to RODRIGUEZ, MURILLO and PEREZ, and other historically-disadvantaged minorities, as compared to similarly-situated non-minorities who currently enjoy affordable access to housing near their workplaces.

346. CARB's new GHG Housing Measures, on their face and as applied to the sorely-needed development of new, affordable housing, are arbitrary and not rationally related to the furtherance of their purported regulatory goal of reducing overall GHG emissions.

H. CARB'S GHG Housing Measures Are "Underground Regulations" and Ultra Vires

347. A regulation is defined as "every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure." Gov. Code § 11342.600.

348. State agencies are required to adopt regulations following the procedures established in the APA and are prohibited from issuing and enforcing underground regulations. Gov. Code § 11340.5. Under the APA, an underground regulation is void.

349. Each of CARB's new GHG Housing Measures are being implemented by CARB, and other state and local agencies, without further rulemaking or compliance with the APA. The GHG Housing Measures are underground regulations requiring APA compliance, and cannot be

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housing-costs-poll-finds/; U.S. Energy Information Agency, State Carbon Dioxide Emissions Data, October 2017, available at https://www.eia.gov/environment/emissions/state/.

lawfully implemented absent authorizing Legislation or formal rulemaking (inclusive of environmental and economic review as required by the APA).

350. CARB's new GHG Housing Measures infringe on areas reserved for other State agencies in two ways:

A. Senate Bill ("SB") 97 directs OPR to develop CEQA significance thresholds via the CEQA Guidelines. OPR's update does not include the Scoping Plan's presumptive CEQA GHG threshold. CARB was expressly allowed by the Legislature in SB 97 to adopt a CEQA significance threshold only in the context of updates to the CEQA Guidelines, which must undergo a rigorous rulemaking process. CARB has acted *ultra vires* and contrary to the express command of the Legislature in adopting its recommended CEQA significance threshold in the Scoping Plan.

B. California has adopted new building standards, which are designed to assure that new building code requirements are cost effective (with payback to the consumer). "Net zero" new home building standards were not included. CARB has no Legislative authority to bypass and frustrate this consumer protection law by using CEQA as a workaround to require "net zero".[142]

351. In articulating and publishing its new GHG Housing Measures, CARB has not complied with the APA's rulemaking procedures and requirements. As a consequence, CARB's new GHG Housing Measures are unlawful underground regulations, and should be held to be void and of no effect.

FIRST CAUSE OF ACTION

(Fair Employment and Housing Act, Gov. Code § 12955 *et seq.*)

352. Petitioners hereby re-allege and incorporate herein by reference the allegations contained in paragraphs 1-351 above, as well as in paragraphs 358-458.

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[142] See generally California Department of Housing and Community Development, State Housing Law Program Laws and Regulations, http://www.hcd.ca.gov/building-standards/state-housing-law/state-housing-laws-regulations.shtml.

353. The Fair Employment and Housing Act (Gov. Code , § 12955 *et seq.*) ("FEHA") provides, *inter alia*, that: "It shall be unlawful . . . (l) To discriminate through public or private land use practices, decisions, and authorizations, because of race, color, . . national origin, source of income or ancestry."

354. CARB's new GHG Housing Measures, on their face and as applied, constitute public land use practices decisions and/or policies subject to the FEHA.

355. CARB's new GHG Housing Measures actually and predictably have a disparate negative impact on minority communities and are discriminatory against minority communities and their members, including but not limited to Petitioners RODRIGUEZ, MURILLO, and PEREZ.

356. CARB's new GHG Housing Measures and their discriminatory effect have no legally sufficient justification. They are not necessary to achieve (nor do they actually tend to achieve) any substantial, legitimate, nondiscriminatory interest of the State, and in any event such interests can be served by other, properly-enacted standards and regulations having a less discriminatory effect.

357. Because of their unjustified disparate negative impact on members of minority communities, including Petitioners, CARB's new GHG Housing Measures violate the FEHA, and should be declared unlawful and enjoined.

SECOND CAUSE OF ACTION

(Federal Housing Act and HUD Regulations, 42 U.S.C. § 3601 *et seq.*; 24 C.F.R. Part 100)

358. Petitioners hereby re-allege and incorporate herein by reference the allegations contained in paragraphs 1-357 above, as well as paragraphs 368-458.

359. The Federal Housing Act (42 U.S.C. § 3601 *et seq.*) ("FHA") was enacted in 1968 to combat and prevent segregation and discrimination in housing. The FHA's language prohibiting discrimination in housing is broad and inclusive, and the purpose of its reach is to replace segregated neighborhoods with truly integrated and balanced living patterns.

360. In formal adjudications of charges of discrimination under the FHA over the past 20-25 years, the U.S. Department of Housing and Urban Development ("HUD") has consistently

concluded that the FHA is violated by facially neutral practices that have an unjustified discriminatory effect on the basis of a protected characteristic, regardless of intent.

361. Pursuant to its authority under the FHA, HUD has duly promulgated and published nationally-applicable federal regulations implementing the FHA's Discriminatory Effects Standard at 24 C.F.R. Part 100 (*see* 78 Fed.Reg. 11460-01 (February 15, 2013)) ("HUD Regulations"). These HUD Regulations continue to apply, and have the force and effect of law.

362. HUD Regulations provide, *inter alia*, that liability under the FHA may be established "based on a practice's discriminatory effect . . . even if the practice was not motivated by a discriminatory intent." 24 C.F.R. § 100.500.

363. HUD Regulations further provide that: "A practice has a discriminatory effect where it actually or predictably results in a disparate impact on a group of persons or perpetuates segregated housing patterns because of race, color, . . . or national origin."

364. CARB's GHG Housing Measures actually and predictably result in a disparate impact on members of minority communities, including but not limited to Petitioners, and perpetuates segregated housing patterns because of race, color, and/or national origin within the meaning of the FHA and HUD Regulations.

365. Because of the discriminatory effect of CARB's GHG Housing Measures, CARB has the burden of proving that these GHG Housing Measures do not violate the FHA as interpreted and implemented through the HUD Regulations.

366. CARB has not met, and cannot meet, its burden of trying to justify the discriminatory effect of its challenged GHG Housing Measures, which are not necessary to achieve the stated goals, which could and should be pursued through other measures having a less discriminatory effect.

367. Because CARB's GHG Housing Measures have an unjustified discriminatory effect on members of minority communities, including Petitioners, they violate the FHA as implemented though HUD Regulations. Consequently, CARB's GHG Housing Measures should be declared unlawful and enjoined, and Petitioners are entitled to other and further relief pursuant to 42 U.S.C. § 1983.

THIRD CAUSE OF ACTION

(Denial of Due Process, Cal. Const. Art. I, § 7; U.S. Const. Amd. 14, § 1)

368. Petitioners hereby re-allege and incorporate herein by reference the allegations contained in paragraphs 1-367 above, as well as paragraphs 373-448.

369. Petitioners have a right to be free of arbitrary State regulations that are imposed without having first been presented to the public through duly-authorized rulemaking processes by Legislatively-authorized State agencies.

370. CARB's new GHG Housing Measures, individually and collectively, will inevitably cause serious harm to the ability of Petitioners and other members of disadvantaged minority communities to gain access to affordable housing, and have a disproportionate adverse impact on them.

371. CARB's new GHG Housing Measures are not rationally calculated to further the State's legitimate interest in reducing GHG emissions, on their face or as applied to housing projects in California. Instead, CARB's new GHG Housing Measures are both arbitrary and counterproductive in terms of actually achieving their purported goals of GHG emission reductions.

372. For these reasons, CARB's GHG Housing Measures have been issued in violation of, and constitute substantive violations of, the Due Process Clauses of the California and United States Constitutions. (Cal. Const. Art. 1, § 7; U.S. Const. Amd. 14, § 1,)

FOURTH CAUSE OF ACTION

(Denial of Equal Protection, Cal. Const. Art. I, § 7, Art. IV § 16; U.S. Const. Amd. 14, § 1)

373. Petitioners hereby re-allege and incorporate herein by reference the allegations contained in paragraphs 1-372 above, as well as 382-458.

374. Non-discriminatory access to housing is a fundamental interest for purposes of evaluating regulations under the equal protection provisions of the California Constitution. Art. I, § 7 and Art. IV, § 16.

375. Non-discriminatory access to housing is a fundamental interest for purposes of evaluating regulations under the equal protection clause of the United States Constitution. U.S. Const. Amd. 14, § 1.

376. CARB's GHG Housing Measures disproportionately affect members of minority communities, including Petitioners RODRIGUEZ, MURILLO and PEREZ, by making affordable housing unavailable to them, as compared with non-minority homeowners unaffected by the new GHG regulations, while imposing arbitrary, counter-productive State regulations and standards.

377. Race and ethnicity are suspect classes for purposes of evaluating regulations under the equal protection provisions of the California Constitution. Art. I, § 7 and Art. IV, § 16.

378. Race and ethnicity are suspect classes for purposes of evaluating regulations under the equal protection clause of the United States Constitution. U.S. Const. Amd. 14, § 1.

379. Petitioners warned CARB about the racially discriminatory aspects of the Scoping Plan prior to CARB's finalizing and issuing the Scoping Plan. Despite Petitioners' warning, CARB disregarded these impacts and issued the Scoping Plan without changes. On information and belief, CARB did so with the intent to disproportionately cause harm to racial minorities, including minority communities of which Petitioners are members.

380. CARB's GHG Housing Measures violate the equal protection provisions of the California Constitution because they make access to new, affordable housing a function of race.

381. CARB's GHG Housing Measures violate the equal protection clause of the United States Constitution because they make access to new, affordable housing a function of race.

FIFTH CAUSE OF ACTION

(Violations of CEQA, Pub. Res. Code § 21000 *et seq.* and CEQA Guidelines, 14 C.C.R. § 15000 *et seq.*)

382. Petitioners hereby re-allege and incorporate herein by reference the allegations contained in paragraphs 1-381 above, as well as paragraphs 395-458.

383. CARB violated CEQA by approving the 2017 Scoping Plan in violation of the Act's requirements and by certifying a legally deficient environmental analysis.

384. CARB did not write its Final EA in plain language so that members of the public could readily understand the document.

385. CARB did not assess the "whole of the project" as required by CEQA. The GHG Housing Measures are included in the 2017 Scoping Plan and thus the "project" for CEQA purposes should have included potential direct and indirect impacts on the environment from the four GHG Housing Measures. CARB did not include an analysis of the four GHG Housing Measures in the EA.

386. CARB did not base its Final EA on an accurate, stable, and finite project description. The EA did not include the four GHG Housing Measures in its project description. For this reason CARB applied an unreasonable and unlawful "project" definition and undermined CEQA's informational and decision-making purposes. The project description was misleading, incomplete, and impermissibly vague.

387. CARB did not properly identify the Project objectives in its EA.

388. CARB's unlawful use of the "cumulative gap" methodology created multiple legal deficiencies in the EA, including in the project description, project objectives, and impact analysis. Had CARB used the appropriate project objective—reducing GHG 40% below the 1990 California GHG inventory by 2030—the estimated 1% of GHG reductions (1.79 tons per year) achieved by the GHG Housing Measures would have been entirely unnecessary, and all disparate and unlawful adverse civil rights, environmental, housing, homelessness, poverty, and transportation consequences of the GHG Housing Measures could have been avoided.

389. At most, CARB could have clearly identified its "cumulative gap" methodology as an alternative to the project that would have further reduced GHG emissions beyond the SB 32 statutory mandate, to further inform the public and decisionmakers of the comparative impacts and consequences of SB 32's legislated GHG reduction mandate, and the more substantial GHG reductions sought by CARB staff. CARB's failure to use the SB 32 statutory mandate of achieving 40% GHG reduction from 1990 levels as of 2030 is a fatal legal flaw.

390. CARB also failed to adequately evaluate the direct, indirect, and cumulative environmental impacts of the 2017 Scoping Plan in its Final EA, even after commenters identified

numerous review gaps in their comments on the Draft EA. As discussed above, CARB was fully on notice of the scale and nature of the impacts associated with the GHG Housing Measures based on CARB's review and approval of more than a dozen regional plans to intensify housing densities near transit, and improve public transit, from all of California's most significant population centers; each of these regional plans identified multiple unavoidable significant adverse environmental impacts from implementation of current plans. The deficiencies in the Final EA include but are not limited to the following:

- Aesthetic impacts such as changes to public or private views and character of existing communities based on increased building intensities and population densities;
- Air quality impacts from increases in GHG, criteria pollutants, and toxic air contaminant emissions due to longer commutes and forced congestion that will occur from the implementation of the VMT limits in the 2017 Scoping Plan;
- Biological impacts from increased usage intensities in urban parks from substantial infill population increases;
- Cultural impacts including adverse changes to historic buildings and districts from increased building and population densities, and changes to culturally and religiously significant resources within urbanized areas from increased building and population densities;
- Urban agriculture impacts from the conversion of low intensity urban agricultural uses to high intensity, higher density uses from increasing populations in urban areas, including increasing the urban heat island GHG effect;
- Geology/soils impacts from building more structures and exposing more people to earthquake fault lines and other geologic/soils hazards by intensifying land use in urban areas;
- Hazards and hazardous materials impacts by locating more intense/dense housing and other sensitive uses such as schools and senior care facilities near freeways, ports, and stationary sources in urbanized areas;

- Hydrology and water quality impacts from increasing volumes and pollutant loads from stormwater runoff from higher density/intensity uses in transit-served areas as allowed by current stormwater standards;
- Noise impacts from substantial ongoing increases in construction noise from increasing density and intensity of development in existing communities and ongoing operational noise from more intensive uses of community amenities such as extended nighttime hours for parks and fields;
- Population and housing impacts from substantially increasing both the population and housing units in existing communities;
- Recreation and park impacts from increasing the population using natural preserve and open space areas as well as recreational parks;
- Transportation/traffic impacts from substantial total increases in VMT in higher density communities, increased VMT from rideshare/carshare services and future predicted VMT increases from automated vehicles, notwithstanding predicted future decrease in private car ownership;
- Traffic-gridlock related impacts and multi-modal congestion impacts including noise increases and adverse transportation safety hazards in areas of dense multi-modal activities;
- Public safety impacts due to impacts on first responders such as fire, police, and paramedic services from congested and gridlocked urban streets; and
- Public utility and public service impacts from substantial increases in population and housing/employment uses and demands on existing water, wastewater, electricity, natural gas, emergency services, libraries and schools.

391. As stated above, although the Scoping Plan's CEQA threshold is not binding on a lead agency, it nevertheless has immediate evidentiary weight as the expert conclusion of the state's expert GHG agency. Thus, the Scoping Plan's CEQA threshold is appropriately justiciable, and should be vacated for the reasons set forth herein.

392. As a result of these defects in the Final EA, CARB prejudicially abused its discretion by certifying an EIR that does not comply with CEQA and by failing to proceed in the manner required by law.

393. Petitioners objected to CARB's approvals of the GHG Housing Measures prior to the close of the final public hearings on CARB's 2017 Scoping Plan and raised each of the legal deficiencies asserted in this Petition.

394. Petitioners have performed all conditions precedent to the filing of this Petition, including complying with the requirements of Pub. Res. Code section 21167.5 by serving notice of the commencement of this action prior to filing it with this Court.

SIXTH CAUSE OF ACTION

(Violations of APA, Gov. Code § 11346 *et seq.*)

395. Petitioners hereby re-allege and re-incorporate herein by reference the allegations of paragraphs 1-394 above, as well as paragraphs 405-458.

396. Under the APA and other applicable law, CARB is required to comply with regulations issued by the Department of Finance ("DOF") before issuing a "major regulation." Specifically, the APA (Gov. Code § 11346.3(c)) requires that CARB prepare a standardized regulatory impact assessment ("SRIA") in a form, and with content, that meets requirements set by the DOF in its separate regulations (1 C.C.R. § 2000 *et seq.*).

397. CARB's GHG Housing Measures constitute a major regulation subject to the APA's requirement that such regulations be promulgated in compliance with DOF regulations.

398. Section 2003 of DOF regulations (1 C.C.R. § 2003(a)) ("Methodology for Making Estimates") provides that, "[i]n conducting the SRIA required by Section 11346.3", CARB "shall use an economic impact method and approach that has all of the following capabilities:

(1) Can estimate the total economic effects of changes due to regulatory policies over a multi-year time period.

(2) Can generate California economic variable estimates such as personal income, employment by economic sector, exports and imports, and gross state product, based on inter-

industry relationships that are equivalent in structure to the Regional Industry Modeling System published by the Bureau of Economic Analysis.

(3) Can produce (to the extent possible) quantitative estimates of economic variables that address or facilitate the quantitative or qualitative estimation of the following.

(A) The creation or elimination of jobs within the state;

(B) The creation of new businesses or the elimination of existing businesses within the state;

(C) The competitive advantages or disadvantages for businesses currently doing business within the state;

(D) The increase or decrease of investment in the state;

(E) The incentives for innovation in products, materials, or processes; and

(F) The benefits of the regulations, including but not limited to benefits to the health, safety, and welfare of California residents, worker safety, and the state's environment and quality of life, among any other benefits identified by the agency."

399. DOF regulations require that DOF's "most current publicly available economic and demographic projections, which may be found on the department's website, shall be used unless the department approves the agency's written request to use a different projection for a specific proposed major regulation." 1 C.C.R. § 2003(b).

400. DOF regulations also provide that: "An analysis of estimated changes in behavior by businesses and/or individuals in response to the proposed major regulation shall be conducted and, if feasible, an estimate made of the extent to which costs or benefits are retained within the business and/or by individuals or passed on to others, including customers, employees, suppliers and owners." 1 C.C.R. § 2003(f).

401. In grafting its new GHG Housing Measures onto the 2017 Scoping Plan, CARB has failed to comply with the APA, including DOF regulations applicable to CARB.

402. More significantly, and consistent with the LAO's repeated findings that the CARB analysis methodology fails to provide sufficiently detailed information about impacts to individuals, households and businesses, CARB's 2017 Scoping Plan completely ignores the fact

that California has the greatest inequality in the United States, and that energy costs, loss of energy-intensive jobs and housing costs related to Scoping Plan policies play a major role in that unwanted outcome. To fulfill its statutory mandates, CARB must start by recognizing that, as meticulously documented in a United Way Study, more than 30% of all California households lack sufficient means to meet the real cost of living in the state.

403. In addition, as described above, by using the unlawful "cumulative gap" methodology to calculate the GHG reductions it claims are needed in the 2017 Scoping Plan, CARB improperly created inputs for the FA that render the entire document invalid.

404. In its present form, the Scoping Plan embodies multiple violations of the APA and should be set aside as unlawful and void.

SEVENTH CAUSE OF ACTION

(Violations of the California Global Warming Solutions Act, Health & Safety Code § 38500 *et seq.*)

405. Petitioners hereby re-allege and incorporate herein by reference the allegations contained in paragraphs 1-404 above, as well as paragraphs 413-458.

406. The GWSA provides in pertinent part that, in promulgating GHG regulations, CARB "shall do all of the following:

(1) Design the regulations, including distribution of emissions allowances where appropriate, in a manner that is equitable, seeks to minimize costs and maximize the total benefits to California, and encourages early action to reduce greenhouse gas emissions.

(2) Ensure that activities undertaken to comply with the regulations do not disproportionately impact low-income communities.

(3) Ensure that entities that have voluntarily reduced their greenhouse gas emissions prior to the implementation of this section receive appropriate credit for early voluntary reductions.

(4) Ensure that activities undertaken pursuant to the regulations complement, and do not interfere with, efforts to achieve and maintain federal and state ambient air quality standards and to reduce toxic air contaminant emissions.

(5) Consider cost-effectiveness of these regulations.

(6) Consider overall societal benefits, including reductions in other air pollutants, diversification of energy sources, and other benefits to the economy, environment, and public health."

407. In responses to Petitioners' comments on the 2017 Scoping Plan, CARB has acknowledged that Chapter 5 of the Scoping Plan (which sets out the new GHG Housing Measures) was not part of what it analyzed in issuing the Scoping Plan. In CARB's words, "These recommendations in the 'Enabling Local Action' subchapter of the Scoping Plan are not part of the proposed 'project' for purposes of CEQA review."[143] Thus, CARB admits that it did not even pretend to analyze the consequences of the provisions of Chapter 5 of the Scoping Plan.

408. CARB's assertion that the new GHG Housing Measures set out in Chapter 5 of the Scoping Plan do not constitute "major regulations" is belied by their content and the legal and regulatory setting in which they were issued, as described above.

409. Each scoping plan update must also identify for each emissions reduction measure, the range of projected GHG emission reductions that result from the measure, the range of projected air pollution reductions that result from the measure, and the cost-effectiveness, including avoided social costs, of the measure. H&S Code § 38562.7.

410. The 2017 Scoping Plan contains no such analysis for CARB's new GHG Housing Measures. The Plan lists potential emission reductions from the "Mobile Source Strategy" which includes the VMT reduction requirements, but does not analyze proposed emission reductions, projected air pollution reductions, or cost-effectiveness of the other measures.

411. CARB's new GHG Housing Measures, as set out in its 2017 Scoping Plan, were issued in violation of some or all of the specific statutory requirements set out in the GWSA, as described above.

[143] Supplemental Responses to Comments on the Environmental Analysis Prepared for the Proposed Strategy for Achieving California's 2030 Greenhouse Gas Target (Dec. 14, 2017), p. 14-16, https://www.arb.ca.gov/cc/scopingplan/final-supplemental-rtc.pdf.

412. As a consequence, CARB's new GHG Housing Measures were adopted in a manner that is contrary to law, and should be set aside.

EIGHTH CAUSE OF ACTION

(Violations of the Health & Safety Code, § 39000 *et seq.*, including the California Clean Air Act, Stats. 1988, ch. 1568 (AB 2595))

413. Petitioners hereby re-allege and incorporate herein by reference the allegations contained in paragraphs 1-412 above, as well as paragraphs 437-458.

414. California has ambient air quality standards ("CAAQS") which set the maximum amount of a pollutant (averaged over a specified period of time) that can be present in outdoor air without any harmful effects on people or the environment.

415. CAAQS are established for particulate matter ("PM"), ozone, nitrogen dioxide ("NO_2"), sulfate, carbon monoxide ("CO"), sulfur dioxide ("SO_2"), visibility-reducing particles, lead, hydrogen sulfide ("H_2S"), and vinyl chloride.

416. In California, local and regional authorities have the primary responsibility for control of air pollution from all sources other than motor vehicles. H&S Code § 39002.

417. Under the California Clean Air Act ("CCAA"), air districts must endeavor to achieve and maintain the CAAQS for ozone, carbon monoxide, sulfur dioxide, and nitrogen dioxide by the earliest practicable date. H&S Code § 40910. Air districts must develop attainment plans and regulations to achieve this objective. *Id.*; H&S Code § 40911.

418. Each plan must be designed to achieve a reduction in districtwide emissions of five percent or more per year for each nonattainment pollutant or its precursors. H&S Code § 40914(a). CARB reviews and approves district plans to attain the CAAQS (H&S Code § 40923; 41503) and must ensure that every reasonable action is taken to achieve the CAAQS at the earliest practicable date (H&S Code § 41503.5).

419. If a local district is not effectively working to achieve the CAAQS, CARB may establish a program or rules or regulations to enable the district to achieve and maintain the CAAQS. H&S Code § 41504. CARB may also exercise all the powers of a district if it finds the

district is not taking reasonable efforts to achieve and maintain ambient air quality standards. H&S Code § 41505.

420. Fresno County is part of the San Joaquin Valley Air Pollution Control District ("SJVAPCD"). The SJVAPCD is currently nonattainment/severe for the CAAQS for ozone and nonattainment for PM.

421. The vast majority of California is designated nonattainment for the CAAQS for ozone and PM.

422. Nitrogen oxides, including NO_2, CO, and volatile organic compounds ("VOCs") are precursor pollutants for ozone, meaning they react in the atmosphere in the presence of sunlight to form ozone.

423. PM is a complex mixture of extremely small particles and liquid droplets found in the air which can cause serious health effects when inhaled, including asthma and other lung issues and heart problems. Some particles are large enough to see while others are so small that they can get into the bloodstream. PM is made up of PM_{10} (inhalable particles with diameters 10 micrometers and smaller) and $PM_{2.5}$ (fine inhalable particles with diameters 2.5 micrometers and smaller).

424. PM emissions in California and in the SJVAPCD increased in 2016 as compared to prior years.

425. As detailed above, the VMT reduction requirements in the 2017 Scoping Plan will result in increased congestion in California.

426. Increasing congestion increases emissions of multiple pollutants including NO_x, CO, and PM. This would increase ozone and inhibit California's ability to meet the CAAQS for ozone, NO_2, and PM, among others.

427. Because CARB intends to achieve the VMT reduction standard by intentionally increasing congestion, which will increase emissions of criteria pollutants such as NO_2 and PM, CARB is violating its statutory duty to ensure that every reasonable action is taken to expeditiously achieve attainment of the CAAQS.

428. In addition to a responsibility under the CCAA to meet the CAAQS, CARB has a statutory duty under the Health & Safety Code to ensure that California meets the National Ambient Air Quality Standards ("NAAQS") set by the EPA.

429. Like the CAAQS, the NAAQS are limits on criteria pollutant emissions which each air district must attain and maintain. EPA has set NAAQS for CO, lead, NO_2, ozone, PM, and SO_2.

430. CARB is designated the air pollution control agency for all purposes set forth in federal law. H&S Code § 39602. CARB is responsible for preparation of the state implementation plan ("SIP") required by the federal Clean Air Act ("CAA") to show how California will attain the NAAQS. CARB approves SIPs and sends them to EPA for approval under the CAA. H&S Code § 40923.

431. While the local air districts have primary authority over nonmobile sources of air emissions, adopt rules and regulations to achieve emissions reductions, and develop the SIPs to attain the NAAQS (H&S Code § 39602.5), CARB is charged with coordinating efforts to attain and maintain ambient air quality standards (H&S Code § 39003) and to comply with the CAA (H&S Code § 39602).

432. CARB also must adopt rules and regulations to achieve the NAAQS required by the CAA by the applicable attainment date and maintain the standards thereafter. H&S Code § 39602.5. CARB is thus responsible for ensuring that California meets the NAAQS.

433. SJVAPCD is nonattainment/extreme for the ozone NAAQS and nonattainment for $PM_{2.5}$.

434. The vast majority of California is nonattainment for the ozone NAAQS and much of California is nonattainment for PM_{10}.

435. It is unlawful for CARB to intentionally undermine California's efforts to attain and maintain the NAAQS by adopting measures in the 2017 Scoping Plan that will increase NOx and PM by intentionally increasing congestion in an attempt to lower VMT to purportedly achieve GHG emission reductions.

436. In adopting the VMT reduction requirements in the 2017 Scoping Plan, CARB is violating its statutorily mandated duty in the Health & Safety Code to attain and maintain the NAAQS, and preventing the local air districts from adequately discharging their duties under law to do everything possible to attain and maintain the NAAQS.

NINTH CAUSE OF ACTION

(Violations of the APA - Underground Regulations, Gov. Code § 11340 – 11365)

437. Petitioners hereby re-allege and incorporate herein by reference the allegations contained in paragraphs 1-436 above, as well as paragraphs 442-458.

438. As explained above, the GHG Housing Measures are standards of general application for state agencies and standards to implement and interpret the 2017 Scoping Plan and the reductions in GHG emissions it is designed to achieve.

439. The four GHG Housing Measures in CARB's 2017 Scoping Plan are underground regulations in violation of APA standards requiring formal rulemaking.

440. As to the CEQA net zero GHG threshold specifically, the Legislature directed OPR to adopt CEQA guidelines as regulations and CEQA itself requires that public agencies that adopt thresholds of significance for general use must do so through ordinance, resolution, rule, or regulations developed through a public review process. CEQA Guidelines § 15064.7(b). Thus, any state agency that purports to adopt CEQA guidelines must do so via regulations, following the full formal rulemaking process in the APA.[144]

441. CARB has not adopted the GHG Housing Measures through a public review process and thus it violates the APA.

[144] *California Building Industry Ass'n v. Bay Area Air Quality Mgmt. Dist.* (2016) 2 Cal.App. 5th 1067 (stating that air district adoption of CEQA guidelines, including GHG thresholds of significance, must be adopted as regulations, including with public notice and comment, and are not mere advisory expert agency opinion).

TENTH CAUSE OF ACTION

(Ultra Vires Agency Action, Code of Civil Proc. §1085)

442. Petitioners hereby re-allege and incorporate herein by reference the allegations contained in paragraphs 1-441 above.

443. In adopting the 2017 Scoping Plan, including the GHG Housing Measures, CARB has acted beyond its statutorily delegated authority and contrary to law.

CEQA Net Zero GHG Threshold

444. The 2017 Scoping Plan would apply a CEQA net zero GHG emissions threshold to all CEQA projects. CEQA applies to the "whole of a project", which includes construction activities, operation of new buildings, offsite electricity generation, waste management, transportation fuel use, and a myriad of other activities.

445. This threshold is unlawful under *Newhall, supra,* 62 Cal.4th 204, and other current California precedent affirming that compliance with law is generally an acceptable CEQA standard. This includes, but is not limited to, using compliance with the cap-and-trade program as appropriate CEQA mitigation for GHG and transportation impacts. *Association of Irritated Residents v. Kern County Bd. of Supervisors* (2017) 17 Cal.App.5th 708.

446. This threshold is also unlawful under OPR's GHG CEQA rulemaking package which stated that there was not a CEQA threshold requiring no net increase in GHG emissions (i.e., no one molecule rule). *See* "Final Statement of Reasons for Regulatory Action", Amendments to the State CEQA Guidelines Addressing Analysis and Mitigation of Greenhouse Gas Emissions Pursuant to SB 97, Dec. 2009, p. 25 ([n]otably, section 15064.4(b)(1) is not intended to imply a zero net emissions threshold of significance. As case law makes clear, there is no "one molecule rule" in CEQA. (CBE, *supra,* 103 Cal.App.4th 120)").

Regulating In An Attempt to Achieve the 2050 GHG Emission Reduction Goal

447. CARB also acted ultra vires by attempting to mandate GHG Housing Measures that purportedly would help California achieve the 2050 GHG reduction goal in Executive Order S-3-05.

448. CARB has no Legislative authority to regulate towards achieving the 2050 goal, a GHG emission reduction target which has not been codified and which the Legislature has repeatedly refused to adopt. Mandating actions in an attempt to reach the 2050 goal is outside CARB's statutory authority under the GWSA which only contains GHG emission reduction standards for 2020 and 2030.

449. The Legislative Analyst's Office has stated that, based on discussions with Legislative Counsel, it is unlikely that CARB has authority to adopt and enforce regulations to achieve more stringent GHG targets. LAO report, p. 7.

VMT Reduction Requirements

450. In addition, the VMT reduction standards mandated in the Scoping Plan are ultra vires and beyond CARB's statutory authority.

451. The Legislature rejected legislation as recently as 2017 requiring VMT reductions/standards.

452. The only agency authorized to consider VMT under CEQA is OPR under SB 743. OPR's proposed SB 743 regulations are going through a formal rulemaking process now and CARB cannot jump the gun and, with zero statutory authority, adopt VMT regulations in the 2017 Scoping Plan.

SB 97 and OPR Promulgation of CEQA Guidelines

453. Similarly, the only method by which the Legislature authorized OPR (with CARB's permissive but not mandatory cooperation) to adopt new CEQA significance thresholds is via updates to the CEQA Guidelines.

454. OPR has not included CARB's new GHG Housing Measures in its proposed new Guidelines, and CARB has no authority to make an "end run" around the rulemaking process established by the Legislature.

New Building Code Requirements

455. The Legislature has enacted new consumer protection requirements, including new building standards, designed to assure that new building code requirements are cost effective.

CARB's "net zero" new home building standard was not included in these new building standards.

456. CARB has no Legislative authority to impose new "net zero" building standards.

457. CARB's new "net zero" building standards are contrary to, and will substantially frustrate, the Legislature's purpose in adopting new building code requirements.

458. CARB's decision to adopt the 2017 Scoping Plan and the GHG Housing Measures within it was also fraught with procedural defects, including violations of the APA, CEQA, and GWSA, as explained above. These procedural defects are further actions that are *ultra vires* and were taken contrary to law.

PRAYER FOR RELIEF

WHEREFORE Petitioners THE TWO HUNDRED, including LETICIA RODRIGUEZ, TERESA MURILLO and EUGENIA PEREZ, request relief from this Court as follows:

A. For a declaration, pursuant to Code of Civil Procedure § 1060, that the following GHG regulations and standards, as set out in CARB's Scoping Plan, are unlawful, void, and of no force or effect:

- The Vehicle Miles Traveled ("VMT") mandate.
- The Net Zero CEQA threshold
- The CO2 per capita targets for local climate action plans for 2030 and 2050

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- The "Vibrant Communities" policies in Appendix C.

B. For a writ of mandate or peremptory writ issued under the seal of this Court pursuant to Code of Civil Procedure § 1094.5 or in the alternative § 1085, directing Respondents to set aside the foregoing provisions of the Scoping Plan and to refrain from issuing any further GHG standards or regulations that address the issues described in subsection A. above until such time as CARB has complied with the requirements of the APA, CEQA, and the requirements of the Due Process and Equal Protection clauses of the California and United States Constitutions;

C. For permanent injunctions restraining Respondents from issuing any further GHG standards or regulations that address the issues described in subsection A. above until such time as CARB has complied with the requirements of the APA, CEQA, and the requirements of the Due Process and Equal Protection clauses of the California and United States Constitutions;

D. For an award of their fees and costs, including reasonably attorneys' fees and expert costs, as authorized by Code of Civil Procedure § 1021.5, and 42 U.S. Code section 1988.

E. That this Court retain continuing jurisdiction over this matter until such time as the Court has determined that CARB has fully and properly complied with its Orders.

F. For such other and further relief as may be just and appropriate.

Dated November 21, 2018

Respectfully submitted,

HOLLAND & KNIGHT LLP

By: _____

Jennifer L. Hernandez
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David I. Holtzman

Attorneys for Plaintiffs/Petitioners
THE TWO HUNDRED, LETICIA RODRIGUEZ, TERESA MURILLO, GINA PEREZ, *et al.*

VERIFICATION

I, Jennifer L. Hernandez, am one of the attorneys for, and am a member of, THE TWO HUNDRED, an unincorporated association, Plaintiffs/Petitioners in this action. I am authorized to make this verification on behalf of THE TWO HUNDRED and its members named herein. I have read the foregoing FIRST AMENDED VERIFIED PETITION FOR WRIT OF MANDATE; COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF and know the contents thereof. I am informed and believe and on that ground allege that the matters stated therein are true. I verify the foregoing Petition and Complaint for the reason that Plaintiffs/Petitioners named in the Petition/Complaint are not present in the county where my office is located.

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

Executed this 21st day of November, 2018, at San Francisco, California.

JENNIFER L. HERNANDEZ

EXHIBIT 1

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

SIERRA CLUB, CENTER FOR BIOLOGICAL DIVERSITY, CLEVELAND NATIONAL FOREST FOUNDATION, CLIMATE ACTION CAMPAIGN, ENDANGERED HABITATS LEAGUE, ENVIRONMENTAL CENTER OF SAN DIEGO, and PRESERVE WILD SANTEE, Petitioners, v. COUNTY OF SAN DIEGO, Respondent.	Consolidated Lead Case No. 37-2018-00014081-CU-TT-CTL Related Cases: No. 37-2012-101054, Sierra Club v. COSD No. 37-2018-13324, Golden Door v. COSD No. 37-2016-037402, Golden Door v. COSD **EX PARTE APPLICATION OF PEOPLE OF THE STATE OF CALIFORNIA FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONERS AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF APPLICATION** **Telephone Appearance** Date: November 14, 2018 Time: 8:30 A.M. Judge: Hon. Timothy B. Taylor Dept: C-72 Action Filed: March 20, 2018 Trial Date: December 21, 2018

INTRODUCTION

The People of the State of California, *ex rel.* Attorney General Xavier Becerra, seek leave to file the attached Amicus Curiae Brief in support of Petitioners Sierra Club, Golden Door Properties and other organizations ("Petitioners") filed against the County of San Diego ("County"). The Attorney General seeks to participate as *amicus curiae* in this action to ensure compliance with the requirements of the California Environmental Quality Act ("CEQA") (Pub. Resources Code, §§ 21000, et seq.) and to protect the natural resources and public health and safety of the State.

This action challenges the County's approval of the revised Climate Action Plan ("revised CAP"), the environmental impact report ("EIR") for the revised CAP, and the Threshold of Significance for climate change impacts. The Attorney General's amicus brief will discuss the County's CEQA violations relating to the revised CAP approvals, including the EIR's failure to analyze the revised CAP's inconsistency with state and regional plans and policies to address climate change. The Attorney General's proposed amicus brief is attached hereto as Exhibit A. The Attorney General's participation as amicus curiae is appropriate in this action and will provide helpful expertise to the Court.

The Attorney General is applying ex parte for leave to file an amicus brief in order to avoid causing any delay in this litigation. Although not required, the Attorney General is also submitting its amicus brief as an exhibit to this application, to provide the court and the parties with the Attorney General's brief as early as possible. Moreover, the People have provided timely notice of this application. (See Declaration of Shannon Clark in Support of *Ex Parte* Application.) Counsel for the Petitioners have informed the People that the Petitioners' support the *ex parte* application of the Attorney General to file an *amicus curiae* brief in this matter. (*Ibid.*) Counsel for the County has informed the People that the County opposes the application. (*Ibid.*)

THE ATTORNEY GENERAL'S PARTICIPATION IS APPROPRIATE

The Attorney General's interest in this case stems both from his responsibility as the State's chief law enforcement officer to ensure that the State's laws are appropriately enforced and from

his duty under the Government Code to protect the environment and natural resources of California. (Cal. Const., art. V, § 13; Gov. Code, §§ 12600-12612; *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 14-15.) As CEQA's enforcer, the Attorney General has a particular interest in ensuring the proper interpretation of CEQA and of the regulations implementing CEQA (Cal. Code Regs., tit. 14, § 15000 et seq.) ("CEQA Guidelines").

The Attorney General has a unique role with respect to actions concerning pollution and adverse environmental effects that could affect the public or the natural resources of the State. (Gov. Code, §§ 12600-12612.) Government Code section 12600 specifically provides that "[i]t is in the public interest to provide the people of the State of California *through the Attorney General* with adequate remedy to protect the natural resources of the State of California from pollution, impairment, or destruction." (Emphasis added.) The Attorney General further has express statutory authority to "intervene in any judicial or administrative proceeding in which facts are alleged concerning pollution or adverse environmental effects which could affect the public generally." (Gov. Code, § 12606.) These provisions are to be liberally construed and applied to promote their underlying purpose. (Gov. Code, § 12603.)

The Attorney General also has a special role in ensuring compliance with CEQA. The Attorney General receives copies of all CEQA notices sent to the State Clearinghouse, must be served with all CEQA complaints (Pub. Resources Code, § 21167.7), and is excused from the Act's exhaustion requirements (Pub. Resources Code, § 21177(d).) "The service of pleadings on the Attorney General has the effect of informing that office of the action and permits the Attorney General to lend its power, prestige, and resources to secure compliance with CEQA and other environmental laws . . . ." (*Schwartz v. City of Rosemead* (1984) 155 Cal.App.3d 547, 561; see Pub. Resources Code, § 21167.7; Code Civ. Proc., § 388.)

For a number of years, the California Attorney General has actively participated in CEQA matters raising issues of greenhouse gas ("GHG") emissions and climate change. In 2006, the Attorney General's Office submitted its first comment letter noting that climate change is an environmental impact that must be addressed under CEQA. Ultimately, the Attorney General's position was codified in 2007 with the passage of Senate Bill 97 (Pub. Resources Code, §

21083.05) and is reflected in CEQA's implementing regulations (Cal. Code Regs., tit. 14, § 15064.4.) Where information, transparency, and effective mitigation have been lacking, the Attorney General has taken action, consistent with the office's longstanding interest in protecting the public welfare and ensuring compliance with CEQA. For example, the Attorney General challenged the adequacy of the EIR certified for the San Diego Association of Governments' 2050 Regional Transportation Plan and Sustainable Communities Strategy because it failed to adequately mitigate its GHG impacts, or consider mitigation that would reduce vehicle miles traveled. (*Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 17 Cal.App.5th 413.) The Attorney General also commented on the County's 2011 General Plan Update EIR, recommending that it's mitigation measure requiring the implementation of a CAP contain as much specificity as possible, so as not to be deferred mitigation. (California Attorney General, *Comments on the Draft EIR for the San Diego General Plan Update* (Aug. 31, 2009) p.7.)

Here, the Attorney General's involvement in this action is appropriate, because the revised CAP may result in adverse environmental effects affecting the public health and safety and natural resources. The EIR acknowledges that the revised CAP will have significant impacts on the state's natural resources. (AR 16:13535.) The revised CAP will increase vehicle use in the County, creating inconsistencies with state laws and policies to address climate change, including Senate Bill 375. (AR 22:18417, 18432-18433; 29:13550.) This increase in vehicle use will also lead to increases in air pollutants such as particulate matter, which is harmful to human and environmental health. (AR 22:19483.) The EIR fails to evaluate or mitigate these significant impacts as required by CEQA. Accordingly, the Attorney General requests permission to file an amicus curiae brief to ensure that the County addresses the harms the revised CAP will cause to the public and the natural resources of the state.

THIS COURT HAS DISCRETION TO ALLOW THE FILING OF THE PEOPLE'S AMICUS CURIAE BRIEF

A trial court has discretion to accept *amicus curiae* briefs. (See *In re Marriage Cases* (2008) 43 Cal.4th 757, 791, fn. 10 ["[T]he superior court, in exercising its traditional broad

discretion over the conduct of pending litigation, retained the authority to determine the manner and extent of [dismissed parties'] participation as amici curiae that would be of most assistance to the court."].) As Witkin's *California Procedure* observes about participation in trial court proceedings, "[a]ttorneys as *amici curiae* ('friends of the court') are occasionally permitted in the complete discretion of the court to be heard orally or by briefs on a legal question in which they are interested." (4 Witkin, Cal. Proc. (5th ed. 2008) Plead, § 216.) Reported cases have mentioned, without objecting to, the practice of trial courts accepting *amicus curiae* briefs from the Attorney General. (See, e.g., *California Attorneys, etc. v. Schwarzenegger* (2009) 174 Cal.App.4th 424, 431 ["Attorney General Edmund G. Brown, Jr. filed an amicus brief in the trial court."]; *People v. Murtha* (1993) 14 Cal.App.4th 1112, 1126, fn. 2 [noting that a deputy attorney general filed an amicus brief in the superior court].) Similarly, trial courts have routinely admitted amicus briefs from other amicus curiae as well. (See, e.g., *Uhler v. City of Encinitas* (1991) 227 Cal.App.3d 795, 799, fn. 1 [noting that, in writ action under CEQA, homeowners "association appeared . . . as amicus curiae before the San Diego County Superior Court"]; *Union Bank of California v. Superior Court* (2005) 130 Cal.App.4th 378, 386 ("The [federal agency] subsequently filed an amicus curiae brief in the trial court"]; *Southwest Diversified, Inc. v. City of Brisbane* (1991) 229 Cal.App.3d 1548, 1550 ["San Mateo County has filed amicus curiae briefs both in the trial court and in this appeal"].) Thus, it is appropriate for the Court to allow the Attorney General to file an amicus curiae brief in this case.

IDENTIFICATION OF ATTORNEYS PURSUANT TO RULE 3.1202 OF THE CALIFORNIA RULES OF COURT

Pursuant to Rule 3.1202 of the California Rules of Court, the People identify the following attorneys who represent the parties in this matter:

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CONCLUSION

To promote the fair adjudication of the important issues raised in this action and to protect the interests of the People of the State of California, the Attorney General respectfully requests that this Court grant its application for leave to file an *amicus curiae* brief in support of the Petitioners.

Dated: November 8, 2018

Respectfully Submitted,

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Exhibit A

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

SIERRA CLUB, CENTER FOR BIOLOGICAL DIVERSITY, CLEVELAND NATIONAL FOREST FOUNDATION, CLIMATE ACTION CAMPAIGN, ENDANGERED HABITATS LEAGUE, ENVIRONMENTAL CENTER OF SAN DIEGO, and PRESERVE WILD SANTEE, Petitioners, v. COUNTY OF SAN DIEGO, Respondent.	Consolidated Lead Case No. 37-2018-00014081-CU-TT-CTL Related Cases: No. 37-2012-101054, Sierra Club v. COSD No. 37-2018-13324, Golden Door v. COSD No. 37-2016-037402, Golden Door v. COSD **[PROPOSED] AMICUS CURIAE BRIEF OF THE PEOPLE OF THE STATE OF CALIFORNIA** **[CALIFORNIA ENVIRONMENTAL QUALITY ACT]** Judge: Hon. Timothy B. Taylor Dept: C-72 Time: 1:30 PM Action Filed: March 20, 2018 Trial Date: December 21, 2018

TABLE OF CONTENTS

Page

INTRODUCTION AND STATEMENT OF INTEREST 5

ARGUMENT 7

I. Well Designed Local Climate Action Plans Serve Important Legal and Environmental Objectives 7

A. Local Governments Have an Essential Role to Play in Meeting the State's Climate Objectives, Including Reducing Vehicle Miles Traveled 7

B. Climate Action Plans Are an Effective Way to Comprehensively Address Local GHG Emissions Trends and Other Local Impacts 11

C. Legally Adequate Climate Action Plans Can Streamline CEQA Review for Future Projects 12

II. The San Diego Climate Action Plan, in Its Current Form, Falls Short from an Environmental and Legal Perspective 13

A. The Revised CAP Will Increase Vehicle Miles Traveled, in Conflict with State Climate Goals and the Revised CAP's Stated Purpose as Mitigation for the General Plan Update 13

B. The Revised CAP and EIR Cannot Serve as Streamlining Documents Under CEQA 16

Conclusion 18

TABLE OF AUTHORITIES

Page

CASES

Center for Biological Diversity v. California Dept. of Fish and Wildlife
(2016) 62 Cal.4th 204 9

Cleveland National Forest Foundation v. San Diego Assn. of Governments
(2017) 3 Cal.5th 497 7

DeVita v. County of Napa
(1995) 9 Cal.4th 763 ..... 5, 7

Sierra Club v. County of San Diego
(2014) 231 Cal.App.4th 1152 5

STATUTES

Gov. Code, §§ 65080 *et. seq.* 9, 10,14

Health & Saf. Code, §§ 38500 *et. seq.* 8

Health & Saf. Code, § 38561 8

Health & Saf. Code, § 38566 8

Pub. Resources Code, § 21002 16

Pub. Resources Code, §§ 21099 *et. seq.* 9

REGULATIONS

Cal. Code Regs., tit. 14, § 15000 *et seq.* 6

Cal. Code Regs., tit. 14, § 15064.4 7

Cal. Code Regs., tit. 14, § 15064.7 18

Cal. Code Regs., tit. 14, § 15125 6

Cal. Code Regs., tit. 14, § 15126.4 16

Cal. Code Regs., tit. 14, § 15152 ..... 12, 16, 17

Cal. Code Regs., tit. 14, § 15166 7

Cal. Code Regs., tit. 14, § 15168 12

Cal. Code Regs., tit. 14, § 15183.5 ..... 6, 7, 12,17,18

TABLE OF AUTHORITIES
(continued)

Page

OTHER AUTHORITIES

Governor's Exec. Order No. S-3-05 (June 1, 2005) 8

Governor's Exec. Order No. B-5-18 (September 10, 2018) 8

Governor's Office of Planning and Research, General Plan Guidelines (2017).....7,11,14,16,17

California Air Resources Board, Scoping Plan (2017) 7,8,9,10,11,13,15,16,17

National Center for Sustainable Transportation, Cutting Greenhouse Gas Emissions Is Only the Beginning: A Literature Review of the Co-Benefits of Reducing Vehicle Miles Traveled (March 2017).....15

INTRODUCTION AND STATEMENT OF INTEREST

Amicus Curiae, the People of the State of California, ex rel. Attorney General Xavier Becerra ("Attorney General"), file this brief in support of the actions filed by the Sierra Club and Golden Door Properties ("Petitioners") against the County of San Diego ("County"). The Attorney General submits this brief to assist the Court in evaluating the adequacy of the County's revised climate action plan ("revised CAP") and its supplemental environmental impact report ("EIR").

In its 2011 General Plan—the "constitution" for San Diego's future development[1]—the County committed to adopting a countywide greenhouse gas ("GHG") emissions reduction plan or climate action plan as its key climate mitigation measure. The Attorney General has long advocated the use of climate action plans to address GHG emissions at the local level by analyzing impacts and identifying mitigation opportunities that may be lost on project-by-project review.[2] The County's decision to prepare a climate action plan was an important step in the right direction from a legal, policy, and environmental standpoint. Still, the County's initial effort in 2012 fell short of complying with the California Environmental Quality Act ("CEQA"). The County failed to ensure that its initial climate action plan included comprehensive and enforceable GHG reduction measures that would keep the County on track to meet its 2020 target and stay on track for continuing emissions reductions over the longer term. In addition, the initial climate action plan lacked its own supplemental environmental analysis. In *Sierra Club v. County of San Diego* (2014) 231 Cal.App.4th 1152, the Court of Appeal affirmed the judgment of this court, laying out these shortcomings with the expectation that the County would fix them, continuing its forward progress.

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[1] *DeVita v. County of Napa* (1995) 9 Cal.4th 763, 773.

[2] See, e.g., Attorney General's Comment Letter on San Diego County General Plan Update Draft Environmental Impact Report (August 31, 2009); Attorney General's Comment Letter on Tulare County General Plan and Recirculated Draft Environmental Impact Report (May 27, 2010); Attorney General's Comment Letter on City of Pleasanton's Proposed General Plan Update and Final Environmental Impact Report (May 8, 2009), available at https://oag.ca.gov/environment/ceqa/letters.

Rather than meeting its CEQA responsibilities, however, the County ignored the Court's requirement that the climate action plan include enforceable measures and instead retained provisions that do not appear to actually result in GHG emissions reductions. Further, the County substantially backtracked by implementing mitigation measure GHG-1, referred to in this brief as the Offset Provision. The Offset Provision allows future developments, including those located far from urban centers, to mitigate their GHG emissions largely through the purchase of offsets. (Administrative Record ("AR") 16:13350.) Positively, the County did take a more environmentally-protective approach in seeking to achieve net zero GHG emissions; however, the Offset Provision in reality is likely to lead to an increase in vehicle travel on the County's roads, conflicting with regional transportation planning and state climate laws that call for reductions in vehicle use.

Despite failing to comply with the Court's order, the County now asserts, wrongly, that the revised CAP and EIR can serve as streamlining documents. If they were to be treated as streamlining documents, future projects consistent with the revised CAP could comply with CEQA by incorporating the GHG analysis and mitigation measures developed in the EIR into project-level environmental review documents. (CEQA Guidelines [Cal. Code Regs., tit. 14, § 15000 et seq.], § 15183.5, 15125.) The County's revised CAP and EIR fall short of CEQA's requirements for streamlining documents, however. Under the CEQA Guidelines, an adequate plan must: (1) quantify GHG emissions within the relevant area, (2) establish GHG emissions targets, (3) identify GHG emissions from anticipated activities in the area, (4) specify GHG reduction measures to achieve the earlier emissions targets, (5) establish a method to monitor the plan's progress, and (6) adopt the plan in a public process that includes environmental review. (*Id*. at § 15183.5, subd. (b).) Here, the revised CAP does not identify the foreseeable GHG emissions from future development projects in its GHG emissions projections. (AR 29:21639.) The revised CAP also does not contain GHG reduction measures that will adequately reduce GHG emissions to meet the revised CAP's targets. Finally, the EIR fails to analyze the revised CAP's inconsistency with state or regional climate plans and policies, and fails to consider feasible mitigation measures that would comply with such laws. Therefore, the revised CAP and

EIR cannot serve as streamlining documents for future project-level environmental review under CEQA Guidelines sections 15183.5. The revised CAP and the EIR's failures violate CEQA and may negatively effect the County's residents, future developers, and the state's efforts to address climate change.

ARGUMENT

I. WELL DESIGNED LOCAL CLIMATE ACTION PLANS SERVE IMPORTANT LEGAL AND ENVIRONMENTAL OBJECTIVES

General plans are "projects" under CEQA and therefore subject to the requirements of CEQA. (*DeVita, supra*, 9 Cal.4th at p. 794; CEQA Guidelines, § 15166.) GHG emissions cause climate change, a serious environmental impact, and therefore must be analyzed and mitigated under CEQA. (CEQA Guidelines, § 15064.4; see generally *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497.)[3] A well designed climate action plan—one that is enforceable and linked to the general plan—recognizes the important role that local governments must play in helping the state continuously and dramatically reduce emissions, and the risk of dangerous climate change, by mid-century. (See Governor's Office of Planning and Research, General Plan Guidelines (2017) p. 223-224, hereafter "General Plan Guidelines," available at http://opr.ca.gov/docs/OPR_COMPLETE_7.31.17.pdf.)

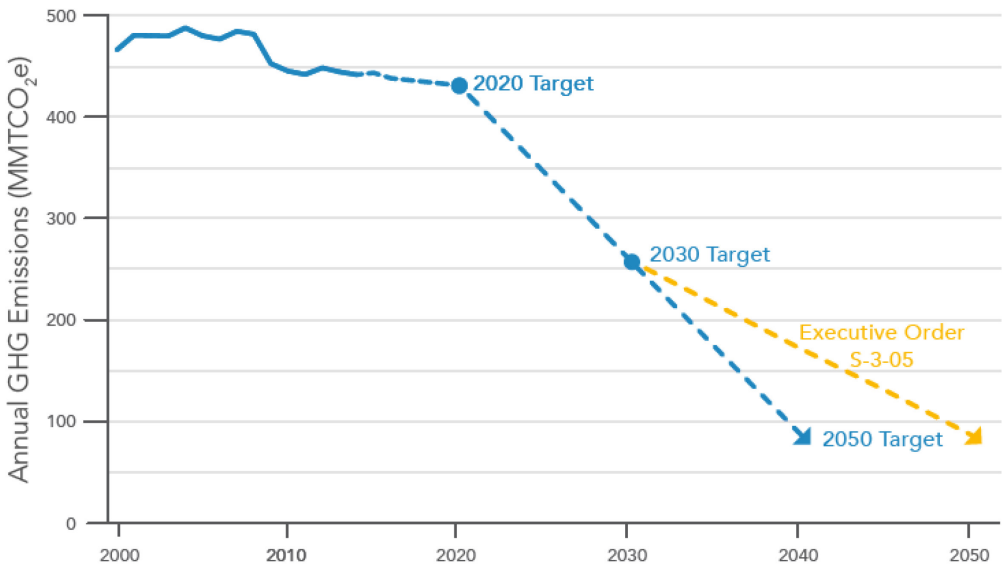
A. Local Governments Have an Essential Role to Play in Meeting the State's Climate Objectives, Including Reducing Vehicle Miles Traveled

California is experiencing first-hand the impacts of climate change, including more severe droughts and wildfires, coastal erosion, and the spread of insect-borne diseases. (AR 1026:55037 [California Air Resources Board, 2017 Scoping Plan (2017) at p. ES 2, hereafter "Scoping Plan"].)[4] In response to the threats of climate change, and consistent with climate science, California took the lead in reducing GHG emissions by enacting the Global Warming Solutions

[3] See also "The *SANDAG* Decision: How Lead Agencies Can 'Stay in Step' with Law and Science in Addressing the Climate Impacts of Large-Scale Planning and Infrastructure Projects" available at http://legal-planet.org/wp-content/uploads/2018/09/environmental-law-news_2017_vol-26-no-2_fall_the-sandag-decision.pdf.

[4] The 2017 Scoping Plan is available at https://www.arb.ca.gov/cc/scopingplan/scoping_plan_2017.pdf.

Act of 2006, also known as AB 32, which set the state's original target of reducing GHG emissions to 1990 levels by 2020. (Health & Saf. Code, §§ 38500 et. seq.) As required by AB 32, the Air Resources Board developed the Scoping Plan, which outlined a framework of GHG reduction strategies and a path for the state to meet AB 32's GHG reduction targets. (Health & Saf. Code, § 38561; AR1026:55038 [Scoping Plan at ES 3].) In 2016, California passed Senate Bill 32 ("SB 32"), which strengthens the goals of AB 32 by setting a goal of reducing GHG emissions 40 percent below 1990 levels by 2030. (Health & Saf. Code, § 38566.) In 2017, the Scoping Plan was updated to include the 2030 targets from SB 32. These "targets have not been set in isolation. They represent benchmarks, consistent with prevailing climate science, charting an appropriate trajectory forward that is in line with California's role in stabilizing global warming below dangerous thresholds. As we consider efforts to reduce emissions to meet the State's near-term requirements, we must do so with an eye toward reductions needed beyond 2030." (AR1026:55038 [Scoping Plan at ES 3].) Represented graphically, our climate challenge is significant:[5]



(AR1026:55071 [Scoping Plan, p. 18, fig. 5, "Plotting California's Path Forward"].)

[5] The chart also depicts the targets established by Executive Order S-3-05, which sets a goal of reducing GHG emissions to 2000 levels by 2010, 1990 levels by 2020 and 80 percent below 1990 levels by 1990. (Governor's Exec. Order No. S-3-05 (June 1, 2005).) In addition to the targets depicted in the chart, recent Executive Order B-55-18 establishes the goal of achieving carbon neutrality by 2045. (Governor's Exec. Order No. B-55-18 (Sept. 10, 2018).)

The Scoping Plan emphasizes that local governments are critical players in achieving the state's climate stabilization goals. (AR1026:55150 [Scoping Plan at p. 97]; see also *id*. at 55072, 55115, 55125, 55140, 55144, 55150-55155 [pp. 19, 62, 72, 87, 91, 97-102].) In particular, local governments are necessary partners in reducing GHG emissions from land use and transportation. The California Supreme Court has recognized that "[l]ocal governments … bear the primary burden of evaluating a land use project's impact on greenhouse gas emissions." (*Center for Biological Diversity v. California Dept. of Fish and Wildlife* (2016) 62 Cal.4th 204, 230.) Further, the Scoping Plan relies on local governments, among other things,[6] to achieve reductions from land use planning and transportation, and states that local governments "can develop land use plans with more efficient development patterns that bring people and destinations closer together in more mixed-use, compact communities that facilitate walking, biking, and use of transit." (AR 1026:55150 [Scoping Plan at 97].)

Transportation is the largest source of GHG emissions in the state, totaling approximately half of statewide GHG emissions. (AR 1026:55063 [Scoping Plan at p. 10].) Accordingly, the development of communities that are compact, have easy access to transit, and are walkable and bikeable is integral to California's low-carbon future. (*Id.* at 55117, 55126-130 [pp. 64, 73-77].) In order to address this massive source of emissions, California has adopted environmental policies and laws intended to accomplish GHG reductions in part through reducing vehicle use. (See, e.g., Gov. Code, §§ 65080 et. seq. (referred to as Senate Bill 375, or SB 375); Pub. Resources Code, §§ 21099 et. seq. (referred to as Senate Bill 743 or SB 743).) These laws and policies not only reduce the GHG emissions that come from vehicles, but also shape land use so that it is conducive to other low-carbon forms of travel.

Reducing "vehicle miles traveled"[7]—a common measurement of vehicle usage—is necessary to achieve SB 32's 2030 emissions reduction goals. Specifically, the Scoping Plan

[6] As the Scoping Plan notes, "many cities and counties improve their municipal operations by upgrading vehicle fleets, retrofitting government buildings and streetlights, purchasing greener products, and implementing waste-reduction policies. In addition, they may adopt more sustainable codes, standards, and general plan improvements to reduce their community's footprints and emissions." (AR1026:55072 [Scoping Plan at p. 19].)

[7] For the purposes of analyzing GHG emissions, one vehicle mile traveled is the equivalent of one vehicle driving one mile.

calls for a 15-percent reduction in total light-duty vehicle miles traveled by 2050 as compared to projected "business as usual" 2050 levels. (AR 1026:55078, 55131 [Scoping Plan at pp. 25, 78].) Additionally, in 2008, California passed Senate Bill 375 ("SB 375"), which helps to achieve state GHG reduction goals specifically by reducing regional GHG emissions from light duty vehicles through coordinated land use transportation planning. (Gov. Code. § 65080 subd. (b)(2)(B)(vii).) Implementation of SB 375 is a primary strategy identified in the Scoping Plan to reduce GHG emissions from the transportation sector. (AR 1026:55154 [Scoping Plan at p. 101].) Under SB 375, regional planning organizations develop regional transportation plans to achieve the regional GHG reduction targets set by the Air Resources Board. (Gov. Code § 65080.) The final Air Resources Board staff report supporting the current SB 375 targets stated that in order to achieve the intent of SB 375, its emissions targets should be "achieved predominantly through strategies that reduce [vehicle miles traveled]." (AR 22:20413 [Air Resources Board, Final Staff Report on the Proposed Update to the SB 375 GHG Emissions Reduction Targets (Oct. 2017) at p. 19].) The regional planning body for the San Diego Region, the San Diego Association of Governments (SANDAG), specifies in its regional transportation plan that GHG reductions are to be achieved through land use planning methods that are designed to reduce vehicle miles traveled, including "using land in ways that make developments more compact, conserving open space, and investing in a transportation system that provides people with alternatives to driving alone." (AR 430:39941.)

Local governments are well positioned to address how best to manage their land use and growth in a sustainable way, consistent with local needs and values, and to solicit community participation in developing communities that are both better for residents and lessen the area's carbon footprint. (AR 1026:55150 [Scoping Plan at p. 97].) Local actions to combat climate change can in many cases be more effective, less costly and provide more environmental and economic co-benefits than regulating at the state level. (*Ibid.*) Beyond SB 375 compliance, the 2017 Scoping Plan also supports comprehensive local planning as an important method to coordinate GHG emissions reductions. (*Id.* at 55152-57 [pp. 99-104].) The Air Resources Board recognizes that "there is a gap between what SB 375 can provide and what is needed to meet the

State's 2030 and 2050 goals," and therefore the Scoping Plan recommends that "local governments consider policies to reduce vehicle miles traveled to help achieve these reductions" through their local planning decisions. (*Id.* at 55154 [p. 101].) In short, if California is to reach its climate objectives, local actions, in particular land use and transportation measures to reduce vehicle use, must be part of a multi-pronged approach to achieving statewide GHG reductions.

B. Climate Action Plans Are an Effective Way to Comprehensively Address Local GHG Emissions Trends and Other Local Impacts

Many local jurisdictions have developed program-level GHG emissions reduction plans, such as climate action plans.[8] These plans outline city-, county- or region-level frameworks that detail the specific actions a local agency will implement to reduce GHG emissions to a specified emissions level that is consistent with the state's long-term climate objectives (General Plan Guidelines at pp. 226-229.) Climate action plans, done correctly, provide a comprehensive approach to fighting climate change on the local level and allow the local government to address impacts that may not be sufficiently analyzed and mitigated if projects are only reviewed one at a time. (*Id.* at p. 223.) Because climate action plans look ahead to the future and can be integrated with other land use development plans, such as general plans, they allow jurisdictions to consider methods of GHG reduction that would not be available on a project-basis, such as zoning for compact development to decrease reliance on vehicles. (*Ibid.*) In addition, adopting a climate action plan can have important local co-benefits. Many local jurisdictions achieve improved local air quality, which can lead to fewer pollution-related health impacts, and fiscal savings through adopting energy-saving measures in a climate action plan.[9]

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[8] See Air Resources Board, California Climate Action Portal Map, available at, https://webmaps.arb.ca.gov/capmap/; see also, Governor's Office of Planning and Research, 2016 California Jurisdictions Addressing Climate Change, available at http://www.opr.ca.gov/docs/2016_California_Jurisdictions_Addressing_Climate_Change_Summary.pdf.

[9] See Statewide Energy Efficiency Collaborative, State of Local Climate Action: California 2016, pp. 4, 41, available at http://californiaseec.org/2016/10/state-of-local-climate-action-california-2016-details-local-climate-leadership-in-the-state/.

C. Legally Adequate Climate Action Plans Can Streamline CEQA Review for Future Projects

Robust local GHG emissions reduction plans—those that will actually reduce local emissions over time—can also streamline CEQA review for projects that comply with the GHG reduction plan itself and the general plan. (CEQA Guidelines, § 15183.5.) Where there is an adequately detailed and enforceable climate action plan, the local government may appropriately determine that the GHG impacts for a project that is consistent with the climate action plan will be less than significant. (*Id.* at § 15183.5, subd. (b).) Additionally, through streamlining, an adequate EIR for climate action plan can provide for "tiering" of environmental review, which allows a project-level EIR to incorporate the analysis from a program-level EIR with respect to issues "adequately addressed"[10] in the program EIR. (*Id.* at § 15152, subd. (b), (f).)

A program-level EIR prepared for a climate action plan can: "[p]rovide an occasion for a more exhaustive consideration of effects and alternatives than would be practical in an EIR on an individual action"; "[e]nsure consideration of cumulative impacts that might be slighted in a case-by-case analysis"; "[a]void duplicative reconsideration of basic policy considerations"; "[a]llow the lead agency to consider broad policy alternatives and program wide mitigation measures at an early time when the agency has greater flexibility to deal with basic problems or cumulative impacts"; and "[a]llow reduction in paperwork." (CEQA Guidelines, § 15168(b).) CEQA streamlining made available by an adequate climate action plan and program level EIR can not only provide important benefits for the agency but also for the developer of the project: developers are provided with a reliable, predictable, more efficient method to address and mitigate a project's GHG emissions. In order for these benefits to be realized, however, a climate action plan must meet the criteria established in the CEQA Guidelines. (*Id.* at §15183.5, subd. (b).)

[10] An issue is "adequately addressed" when its significant impacts are fully mitigated, or when it is completely analyzed so that all foreseeable significant impacts are identified and ready to be mitigated at the project level. (*Id.* at 15152, subd. (f)(3).)

II. THE SAN DIEGO CLIMATE ACTION PLAN, IN ITS CURRENT FORM, FALLS SHORT FROM AN ENVIRONMENTAL AND LEGAL PERSPECTIVE

The County's revised CAP and EIR will foreseeably increase vehicle use in the County by allowing required GHG emission reductions to be accomplished mostly with offsets instead of land use and transportation measures to reduce vehicle miles traveled. This reliance on offsets contradicts the goals of state climate policies such as SB 375. The revised CAP and EIR also both fall short of CEQA's requirements for environmental review and criteria for streamlining documents. The revised CAP does not include the GHG emissions from foreseeable future general plan amendment projects in their GHG emissions projections, nor do they demonstrate that the revised CAP's GHG reduction measures will actually reduce to insignificant the GHG emissions from the County's General Plan Update. Further, the EIR fails to analyze the revised CAP's inconsistency with statewide GHG emissions reductions goals and regional GHG emissions reduction plans or consider feasible measures that would reduce GHG emissions in a manner consistent with these goals.

A. The Revised CAP Will Increase Vehicle Miles Traveled, in Conflict with State Climate Goals and the Revised CAP's Stated Purpose as Mitigation for the General Plan Update

Contrary to the state's climate objectives, as expressed in the Scoping Plan and SB 375, and contrary to the County's characterization of the revised CAP as a GHG mitigation measure for the General Plan Update, there is substantial evidence that the revised CAP will foreseeably *increase* vehicle miles traveled in San Diego County, thereby increasing GHG emissions. This increase in emissions arises from the Offset Provision in the EIR. (AR 16:13350.)

The County's decisions to require certain future general plan amendment projects to achieve net zero GHG emissions, as well as to design the Offset Provision with a hierarchy that favors feasible on-site mitigation before turning to offsets for GHG reduction, reflect positive, environmental policy.[11] The problem here, however, is that the County's Offset Provision actually creates a framework which allows future general plan amendment developments in the

[11] Verifiable, enforceable measures that prioritize on-site mitigation not only serve to implement the state's climate stabilization goals, they also allow local communities to realize the important co-benefits of GHG reduction, including a reduction in conventional air pollutants emitted from the transportation sector. (AR 1026:55155 [Scoping Plan at p. 102].)

County to mitigate the majority of their GHG emissions through the purchase of carbon offsets. (AR 16:13350.) While offsets can be an effective part of a successful overall mitigation strategy, a GHG reduction program that relies on offsets should only be turned to *after* on-site reduction and measures to reduce vehicle use are implemented. (General Plan Guidelines at p. 231.) Here, the County does not require any minimum amount of on-site reduction and does not implement other methods of reducing vehicle miles traveled, such as siting development projects close to urban centers and transit, as instructed by the State's climate stabilization policies (AR 16:13350) and as suggested by commenters on the draft EIR (AR 22:18452, 18470).[12] Because SB 375 instructs that GHG reductions are to result from land use development and transportation patterns, offsets cannot be used to achieve the regional goals under SB 375. (Gov. Code § 65080 (b)(2)(B).)

Additionally, because the Offset Provision applies to general plan amendment projects, it could allow the County to avoid mitigating vehicle emissions from the projects that are most likely to lead to increases in vehicle miles traveled. (AR 32:22068.) General plan amendment developments are generally large-scale projects that exceed density requirements outlined in the general plan and are often located in rural areas with more open space. (AR 22:18417, 18432-18433.) By their very nature, general plan amendment developments increase vehicle miles traveled because residents or visitors to these developments need to drive longer and farther distances to get to or from urban centers.[13] By allowing rural development to be mitigated largely with offsets, rather than requiring development to be sited closer to urban centers, the Offset

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[12] In the Offset Provision "feasible" is not defined, and is to be determined entirely at the County planning director's sole discretion, in the absence of any objective criteria. (AR 16:13350.) As a result, the County has not developed a mechanism to ensure that onsite mitigation will actually occur. This is demonstrated by the fact that currently approved general plan amendment projects that rely on the Offset Provision in the EIR result in little on-site mitigation actually being required by the County. For example, the approved Newland Sierra project mitigates a full 82 percent of its emissions with offsets. (AR 22:18678.)

[13] For example, the Harmony Grove Village South project, which was recently approved by the County and required a general plan amendment, will increase vehicle miles traveled by 11.5 million miles annually. (ROA 89 in Case No. 37-2018-013324, at p. 76 [Harmony Grove Village South Draft Final Environmental Impact Report at p. 2.7-25].) Similarly, the Newland Sierra general plan amendment project will increase vehicle use by 294,804 miles *daily*. (*Id.* at p. 204 [Greenhouse Gas Emissions Technical Report for the Newland Sierra Project (June 2018), p. 2.7-38].)

Provision foreseeably generates increases in vehicle miles traveled, and a resulting inconsistency with state climate laws and policies, such as SB 375, that are designed to reduce GHG emissions through reducing vehicle use.

The Offset Provision also reflects a larger misunderstanding of the purpose behind state climate policy. California's climate policies and statutes, such as AB 32, SB 32, the Scoping Plan and SB 375, are designed to achieve long-term climate stabilization that continues far beyond the deadlines of the emissions targets they impose. ((AR1026:55038 [Scoping Plan at p. ES 3].) Creating more compact, sustainable land use patterns aimed at reducing vehicle use is consistent with this goal. Vehicle use can exacerbate GHG emissions beyond what is emitted from tailpipes by encouraging roadbuilding and land use development policies designed to accommodate drivers. (National Center for Sustainable Transportation, Cutting Greenhouse Gas Emissions Is Only the Beginning: A Literature Review of the Co-Benefits of Reducing Vehicle Miles Traveled (March 2017) p. 5 (hereafter "NCST Literature Review"), available at https://ncst.ucdavis.edu/wp-content/uploads/2017/03/NCST-VMT-Co-Benefits-White-Paper_Fang_March-2017.pdf.) Offsets, which achieve a one-time reduction in emissions, cannot address these structural, long-term harms. In contrast, policies that prioritize compact land use development can create healthy communities that perpetuate GHG reductions and other co-benefits well beyond the life of the project. (NCST Literature Review at pp. 2-5, 9, 11.) The County's reliance on offsets is fundamentally short sighted: it seeks to meet SB 32's 2030 emissions targets without considering how the Offset Provision will increase vehicle use and generate additional GHG emissions of the region long into the future.[14] Under the revised CAP, vehicle miles traveled in the County will foreseeably increase, an outcome inconsistent with the Scoping Plan and SB 375.

[14] The revised CAP and EIR also do very little to *reduce* vehicle miles traveled, even when adopting measures designed to do so. (AR 29:21658.) For example, Measures T-2.2 and T-2.3 of the revised CAP both purport to reduce vehicle miles traveled, but only from non-residential development and from County employee commutes, even though these sources are responsible for a very small amount of overall transportation emissions. (AR 29:21661-21664.)

B. The Revised CAP and EIR Cannot Serve as Streamlining Documents Under CEQA

The County states specifically that the revised CAP and EIR have complied with all the requirements needed to serve as adequate streamlining documents for future projects, including future general plan amendment projects. (AR 32:22068.) Additionally, the County allows future general plan amendment projects to streamline from the Offset Provision in the EIR, permitting them to reduce their GHG emissions below levels of significance if they comply with the Offset Provision. (AR 16:13552.) Because the Revised CAP and EIR fall short of the CEQA Guidelines requirements for streamlining, the County's assertion that they serve this purpose is incorrect. Program-level environmental documents must identify and analyze all foreseeable significant impacts before project-level documents can incorporate their analysis. (CEQA Guidelines, § 15152, subd. (b).) Here, the EIR does not identify or analyze the Offset Provision's inconsistency with the Scoping Plan and SB 375 that results from expected increases in vehicle miles traveled. (AR 16:13550-13553.) As a consequence, the public has not been adequately informed about how developing San Diego County's rural open space will impact SANDAG's ability to meet its regional targets under SB 375. Because achieving SB 375 targets is part of the state's strategy to meet state climate targets, and because SB 375 anticipates that regional plans, such as the strategy adopted by SANDAG, will result in coordinated and balanced transportation planning, it is important for local agencies to evaluate the consistency of their actions, including approval of individual land use development projects, with the ability of regional planning organizations to meet their assigned GHG emissions reduction targets under SB 375. The EIR fails to consider feasible measures that would reduce vehicle miles traveled, consistent with state policies. (Pub. Resources Code, § 21002; CEQA Guidelines, §. 15126.4.) Numerous commenters identified an array of feasible measures that would reduce vehicle miles traveled, including siting requirements that require general plan amendment projects to be located near urban centers or transit. (See, e.g. AR 22:18452, 18470.) Additional examples of policies that can reduce vehicle miles traveled can be found in both the Scoping Plan and the General Plan Guidelines, yet the EIR does not consider these measures. (See Scoping Plan, Appendix B;

General Plan Guidelines, Appendix A.) Absent this analysis and mitigation, the EIR's discussion is inadequate to streamline project-level environmental review, and the CEQA Guidelines prohibit incorporating the EIR's GHG analysis into later project-level EIRs. (See CEQA Guidelines, §§ 15152, subd. (b), 15183.5, subd. (b)(1)(F).)

The revised CAP does not meet the standards set out in the CEQA Guidelines for GHG reduction plans intended to streamline environmental review. (CEQA Guidelines, § 15183.5, subd. (b).) The CEQA Guidelines specify that, among other elements, a GHG reduction plan must "[q]uantify greenhouse gas emissions, both existing and projected over a specified time period, resulting from activities within a defined geographic area." (*Id*. at § 15183.5, subd. (b)(1)(B).) However, the revised CAP does *not* include pending or future GHG emissions from general plan amendment developments – emissions that the County acknowledges as foreseeable – in its GHG emissions projections for 2020, 2030, or 2050. (AR 29:21639.) Streamlining GHG reduction plans must also "specify measures or a group of measures that substantial evidence demonstrates, if implemented on a project-by-project basis, would collectively achieve the specified emissions level." (CEQA Guidelines, § 15183.5, subd. (b)(1)(D).) The revised CAP similarly falls short of this standard. The EIR states that the revised CAP's GHG reduction measures are estimated to achieve exactly the amount of GHG reductions needed to reduce the County's GHG impacts below significance for 2030, meaning that *every one* of the measures must accomplish its stated GHG reductions or else the County will fall short of its 2030 target. (AR 16:13555.) However, many of the CAP measures are not enforceable. For example, Strategy T-4.1, Establish a Local Direct Investment Program, purports to reduce 174,460 metric tons of CO_2 by 2030 even though the approval, funding, and implementation of the investment projects are all deferred to a later time, and that approval is not guaranteed. (AR 29:21682.) Instead, the County could have proposed investment projects directly in the revised CAP, described how many GHG emissions each project would be required to produce and set a deadline for project completion. The County's failure to include such detail shows it cannot demonstrate with substantial evidence that the revised CAP is adequate mitigation for the GHG impacts of the General Plan Update. The CAP does not satisfy the requirements of CEQA

Guidelines section 15183.5, and ultimately the revised CAP cannot serve as a streamlining document under CEQA. [15]

CONCLUSION

In sum, the revised CAP and EIR are deficient as streamlining documents under CEQA. The revised CAP does not include the GHG emissions from foreseeable future general plan amendment projects in their GHG emissions projections, and does not include measures that will demonstrably reduce GHG emissions from the County's General Plan Update to levels of insignificance. In addition, the EIR violates CEQA because the EIR does not analyze the reasonably foreseeable indirect impacts caused by the revised CAP's mitigation measure, the Offset Provision. Specifically, the EIR fails to analyze the Offset Provision's inconsistency with statewide GHG emissions reductions goals and regional GHG emissions reduction plans, and the EIR does not consider feasible measures that would reduce GHG emissions in a manner consistent with these goals and plans. For these reasons, the Attorney General requests that the Court vacate and set aside the County's approval of the revised CAP and the EIR.

Dated: November 8, 2018

Respectfully Submitted,

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LA2018302801

[15] In addition, because the revised CAP does not provide substantial evidence that its measures will achieve the claimed emission reductions, the County has not complied with CEQA because it fails to reduce the General Plan Update's impacts below levels of significance. (CEQA Guidelines, § 15064.7.)

EXHIBIT 2

Nunc Pro Tunc 3/16/2018
per 4/3/18 Court Order

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

SIERRA CLUB, Petitioner, v. COUNTY OF SAN DIEGO, Respondent.	CASE NO.: 37-2012-00101054-CU-TT-CTL **THIRD SUPPLEMENTAL PETITION FOR WRIT OF MANDATE** **IMAGED FILE** (CALIFORNIA ENVIRONMENTAL QUALITY ACT) Judge: Hon. Timothy B. Taylor Dept: C-72 Original Petition Filed: July 20, 2012 Mandate Filed: February 18, 2014

INTRODUCTION

1. Petitioner Sierra Club ("Petitioner" or "Sierra Club") files this Third Supplemental Petition for Writ of Mandate seeking a Writ of Mandate to the County of San Diego to fully comply with the California Environmental Quality Act ("CEQA"), Health and Safety Code sections 21000, et seq., and the Writ of Mandate issued by this Court on May 4, 2015. This Court's Writ followed remand after the Court of Appeal's opinion in *Sierra Club v. County of San Diego* (2014) 231 Cal.App.4th 1152 affirmed this Court's ruling that the County's previous CAP was not adopted in the manner required by law in that it "fail[ed] to incorporate mitigation measures into the CAP as required by Public Resources Code section 21081.6." (*Id.* at 1167-68.) The Writ commanded the County to set aside its Climate Action Plan adopted in June 2012, to prepare a new Climate Action Plan ("CAP") (hereinafter "Revised CAP"), and to comply fully with CEQA and any and all other applicable laws.

2. On February 14, 2018, the County adopted a Revised CAP. The County has failed to comply with this Court's Writ, in that the Revised CAP does not contain additional (in excess of what would happen absent the activity to create offsets) and fully enforceable measures to mitigate the significant adverse effects on the environment of the County's adoption of the 2011 General Plan Update ("GPU"), and has failed to carry out Mitigation Measure CC-1.2 set out in the Program Environmental Impact Report (PEIR) for the GPU. Mitigation Measure CC-1.2 required the adoption by the County of a CAP that would achieve specified reductions in the emissions of greenhouse gases ("GHGs") from County operations and community emissions in the County by the year 2020. The Revised CAP fails to satisfy Mitigation Measure CC-1.2 in that it contains almost no enforceable measures to reduce GHG emissions, and will not reduce such emissions by 2030 to levels specified in state law. (Health and Safety Code sections 38550, 38566.) The County adopted a CAP that relies, among other things, on "County initiatives" to reduce GHG emissions that are unenforceable and unfunded. Further, despite the requirement in the GPU that GHG emissions reductions be made within the County (Mitigation Measure CC-1.2), the County adopted a CAP that allows GHG emissions *within* the County to

rise, if they are purportedly compensated for ("offset") by GHG emissions reductions *outside* the County, outside the state of California, and even on other continents.

3. Although transportation is responsible for about 45% of the GHG emissions in the County, the CAP does not commit to use the County's plenary land use authority over approximately 82% of the land within San Diego County to restrain the expansion of urban sprawl into the unincorporated rural and "back-country" areas to reduce the growth in driving (called "vehicle miles traveled," or "VMT") and its attendant GHG emissions. This is inconsistent with the County's General Plan, including, for example, the Conservation and Open Space Element, which encourages and supports land use development patterns and transportation choices that reduce pollutants and greenhouse gases. The EIR fails to analyze this inconsistency. Nor is the CAP consistent with the GHG reduction provisions of the region-wide Regional Transportation Plan and Sustainable Communities Strategy prepared by the San Diego Association of Governments ("SANDAG"), which is designed to reduce GHG emissions associated with driving.

4. On February 14, 2018, the County also adopted a new Threshold ("New Threshold") for determining the significance under CEQA of the GHG emissions caused by new residential development projects that require General Plan Amendments ("GPAs"), i.e., new projects that exceed the land use designation and/or intensity allowed in the GPU, and thus require the GPU to be amended before such a new project may qualify for a permit. This Threshold requires such projects to incorporate onsite GHG reductions measures from a County-adopted Checklist, but then allows such projects to mitigate the climate impacts of their remaining GHG emissions by obtaining *offsite* GHG emissions offsets. These offsets need not be obtained in San Diego County, as the GPU provides, but may be obtained anywhere in the world. Verification of the amount and the efficacy of these offsets need be shown only "to the satisfaction" of the Director of Planning and Development.

5. Obtaining offsets outside of San Diego County not only violates Mitigation Measure CC-1.2, which requires in-County GHG reductions, but also has other environmental impacts. Local offset projects would reduce co-pollutants and improve local air quality.

Further, new residential GPA development projects in the unincorporated County, and especially in the rural and back country areas, would generate added emissions of conventional air pollutants from new driving to and from these relatively remote locations, and the new development may lead to additional development in these areas, causing increased transportation and air pollutant emissions. While the lifespan of such residential developments is presumed in the CAP to be 30 years, any roads built or expanded to service these developments could continue to encourage and accommodate driving, and its attendant GHG and conventional air pollutant emissions, far beyond that time. Burdens from the County's failure to reduce GHG emissions by its fair share will cause at least incremental increases in the impacts of climate destabilization, including but not limited to drought, incidence of wildfires, and increase in conventional air pollutants, and from the cost of additional imported or recycled potable water, will also fall most heavily on poor communities and ethnic minorities.

6. The New Threshold allows and accommodates new development that exceeds the designation and intensity of land use set out in the GPU. Such new development may cause a significant adverse effect on the environment, caused by added demand for urban services, including roadway capacity, added GHG and conventional air pollutant emissions, and added water use that could require GHG-intensive importation of potable water from outside San Diego County or the production of additional potable water inside the County. Despite CEQA's mandate that an environmental assessment be performed of any project carried out or approved by a public agency that may harm the environment, the County did not perform such an analysis prior to its adoption of the New Threshold and Checklist. This violated both the express provisions of CEQA, and also its core purposes of ensuring that governmental decisions are made with environmental consequences in mind, inviting and including the public in all such decisions, and ensuring that any significant environmental harm is mitigated. (Public Resources Code sections 21000(g), 21002.1, 21002, 21003.)

7. The Sierra Club and other environmental groups submitted comments to the County and appeared to testify at public hearings before the County to urge the County to adopt a Revised CAP and New Thresholds that would be consistent with the GPU and would comply

with CEQA, rather than the CAP and Threshold it did adopt, and to offer feasible measures to reduce GHG emissions. The comments were fruitless.

JURISDICTION

8. This Court has jurisdiction over the writ action under Code of Civil Procedure sections 1085 and 194.5, et seq., and under sections 21168 and 21168.5 of the Public Resources Code.

9. In addition, in its previous rulings in this case and its Writ issued on May 4, 2015, and pursuant to Public Resources Code section 21168.9(b), this Court retains jurisdiction over San Diego County until this Court determines that the County has fully complied with CEQA and all other applicable laws as to its CAP and Thresholds of Significance.

PARTIES

10. Petitioner Sierra Club is a national nonprofit organization with more than 600,000 members nationwide, including almost 150,000 members in California, and approximately 12,000 members in San Diego and Imperial Counties.

11. The Sierra Club is dedicated to: exploring, enjoying, protecting, and preserving for future generations the wild place of the earth; practicing and promoting the responsible use of the earth's ecosystems and resources; educating and enlisting humanity to protect and restore the quality of the natural and human environment; and using all lawful means to carry out these objectives. The Sierra Club's concerns encompass climate stabilization, coastal issues, land use, transportation, wildlife and habitat preservation, and use and protection of public parks and recreation. The interests that this Petitioner seeks to further in this action are within the purposes and goals of the organization. Petitioner and its members have a direct and beneficial interest in the County's compliance with CEQA, with the measures in its own General Plan Update, and with the Judgment and Writ of this Court. The maintenance and prosecution of this action will confer a substantial benefit on the public by protecting the public from the environmental and other harms alleged herein, including but not limited to requiring informed and publicly transparent decision-making by the County.

12. The County of San Diego is a public agency under Section 21063 of the Public Resources Code. The County is authorized and required by law to hold public hearings, to determine adequacy of and certify environmental documents prepared pursuant to CEQA, and to take other actions in connection with the approval of projects within its jurisdiction.

BACKGROUND AND STATEMENT OF FACTS

13. On August 3, 2011, the County adopted a General Plan Update ("GPU"), in which the County committed to preparing a climate change action plan with detailed greenhouse gas ("GHG") emissions reduction targets and deadlines and " 'comprehensive and enforceable GHG emissions reduction measures that will achieve' specified quantities of GHG reductions." (*Sierra Club*, *supra*, 231 Cal.App.4th at 1156. The GPU adopted by the County in 2011 committed to achieving a reduction in GHG emissions to the level that existed in 1990 by 2020, pursuant to the Legislature's command in Health and Safety Code section 38550 (often referred to as "AB 32"). Since that time, the Legislature has acted to require a reduction in GHG emissions to 30% below the 1990 level by 2030. (Health and Safety Code section 38566 [often referred to as "SB 32"].)

14. As mitigation for the harm to the climate from GHG emissions that would be caused by the GPU, the County adopted Mitigation Measure CC-1.2, which "requires the preparation of a County Climate Change Action Plan." (*Sierra Club*, *supra*, 231 Cal.App.4th at 1159.) On June 20, 2012, the County adopted a CAP and Thresholds for determining the significance for CEQA purposes of GHG emissions, as well as an Addendum to the General Plan Update EIR.

15. On July 20, 2012, the Sierra Club filed the original Petition for Writ of Mandate in this case, challenging the County's CAP and Thresholds, alleging that the County had not followed the procedures required by law, and had not conformed to Mitigation Measure CC-1.2 in the GPU.

16. On April 19, 2013, this Court ruled in favor of the Sierra Club, concluding that the CAP was not properly adopted and violated CEQA. It did not rule on the validity of the Thresholds of Significance, since that was unnecessary in view of its invalidation of the CAP.

This Court entered Judgment and issued a Writ of Mandate on April 24, 2013. The County promptly appealed.

17. In November of 2013, while the County's appeal of this Court's ruling was pending, the County Director of Planning and Development Services released Staff-developed Thresholds of Significance.

18. On February 18, 2014, the Sierra Club filed a Supplemental Petition for Writ of Mandate challenging the Staff-developed Thresholds of Significance, and asking this Court to set them aside until and unless the County complied with the Judgment and Writ. The parties later stipulated to the rescission of the Thresholds, and the County Board of Supervisors rescinded them on April 8, 2015.

19. On October 29, 2014, the Court of Appeal affirmed this Court's ruling. In its opinion, the Court of Appeal stated: "By failing to consider environmental impacts of the CAP and Thresholds project, the County effectively abdicated its responsibility to meaningfully consider public comments and incorporate mitigation conditions." (*Sierra Club*, *supra*, 231 Cal.App.4th at 1173.)

20. On May 4, 2015, this Court issued a Supplemental Writ of Mandate ordering the County to set aside the CAP, findings, and 2013 Thresholds. The County was also ordered to file in its initial Return to the Writ an estimated schedule for preparing a Revised CAP and New Thresholds, and for complying with CEQA with regard to those actions. The County filed an initial Return detailing the rescission of the 2013 CAP and Thresholds, and projecting adoption of the CAP and EIR in "Spring 2016-Winter 2017," without mention of the Thresholds. The County filed further Returns detailing its very dilatory progress.

21. On July 29, 2016, the Director of Planning and Develoment Services issued the "2016 Climate Change Analysis Guidance," over the written protest of the Sierra Club.

22. In August 2017, the County released a draft Environmental Impact Report (EIR) for a Revised CAP and opened a public comment period on the Revised CAP and the Draft Supplemental EIR. The Sierra Club submitted comment letters detailing the defects of the Revised CAP on September 25, 2017 (letter to the County's Planning and Development

Services), on January 16, 2018 (letter to the Planning Commission and the Board of Supervisors), and February 12, 2018 (letter to the Board of Supervisors), raising all issues complained on in this Petition.

23. On February 14, 2018, the County Board of Supervisors considered the Revised CAP and its Final Supplemental EIR, along with other documents related to the Revised CAP. These included Guidelines for Determining Significance – Climate Change ("Significance Guidelines") and its associated Threshold of Significance ("New Threshold"), which would allow a project's GHG emissions to be found insignificant for CEQA purposes if the project's land use designation and intensity were consistent with the GPU and CAP, without necessarily quantifying the project's GHG emissions and making their total public, and obviating any requirement by the County to mitigate those emissions.

24. The Guidelines also would allow a project that requested General Plan amendment ("GPA projects") to be found consistent with the CAP if it incorporated design features in a Checklist also included in those Guidelines. GHG emissions that were not prevented by incorporation of these design features could be deemed insignificant for CEQA purposes if the applicant obtained GHG offsets according to a geographic priority list. The priority list requires GHG offsets within the unincorporated County to be sought first, but if none were available, such offsets could be sought in the County as a whole, then anywhere in the State of California, then anywhere in the United States, then anywhere in the world. Further, the County Director of Planning and Development Services is empowered to deem GHG offsets to be unavailable in any geographic tier if they are not economically "feasible" to obtain, with such infeasibility to be shown "to the satisfaction" of the Director. No standards for determining such infeasibility are provided. The Director might be free to determine that offsets in California are economically infeasible if cheaper offsets could be obtained somewhere in Africa or Asia.

25. The Supplemental EIR states that virtually no GHG offsets are now available in San Diego County (FEIR, p. 8-53), thus ensuring that applicants for GPA projects will seek such offsets outside the County, and probably outside the United States, where Petitioner is informed and believes they are the least expensive, but are also very difficult to verify and enforce.

26. Notwithstanding the Sierra Club's comments and those of other environmental and community groups, on February 14, 2018, as set above, the Board of Supervisors adopted the Revised CAP and its Mitigation Measure M-GHG-1, together with associated documents, including the Mitigation Monitoring and Reporting Program. The Board of Supervisors also certified the final EIR on the Revised CAP and adopted the Significance Guidelines, New Threshold, the Climate Action Plan Consistency Review Checklist ("Checklist"), and amendments to the GPU that removed deadlines and made other changes to Mitigation Measure CC-1.2.

27. Petitioner has a beneficial right to, and a beneficial interest in, Respondent's fulfillment of all its legal duties, as alleged herein.

28. Petitioner has no plain, speedy, or adequate remedy at law. Unless this Court enjoins and sets aside its action, the County will approve projects with climate change impacts without an adequate, science-based environmental analysis of those impacts, and without adequate, science-based mitigation for those impacts. The climate-altering GHG emissions from these and future such projects, emissions that will remain in the atmosphere and destabilize the climate for decades or centuries, will have lasting and adverse effects on the climate, to the detriment of all residents of San Diego County and the State of California.

29. A valid, science-supported assessment under CEQA of the Guidelines, Threshold, and Checklist is necessary to ensure that the effects of GHG emissions are properly evaluated and mitigated, and to comply with the commitments the County made in the 2011 General Plan Update.

30. The County is currently processing projects that would requirement amendments to the GPU in order to allow large commercial or residential development on lands that are not currently designated for such intensive use. This includes, but is not limited to, lands designated as open space, semi-rural, agricultural, and village residential (hereafter referred to as "greenfields"). (A chart of such proposed GPA projects was attached as Exhibit B to the Second Supplemental Petition for Writ of Mandate in this case.)

31. Failing to enjoin the County actions complained of herein will result in the need for individual lawsuits challenging the approval of each such greenfield project, which would not be an efficient use of judicial resources, and would require a significantly larger commitment of resources by Petitioner Sierra Club and other parties who want to ensure that the County will meet its commitment to achieve the GHG emissions reductions required by AB 32 and SB 32, and will not contribute to further climate destabilization.

FIRST CAUSE OF ACTION
For Violation of Judgment
(Cal. Code of Civ.Pro. § 1085; Cal. Pub. Res. Code § 21168.5)

32. All prior paragraphs are fully incorporated by reference here.

33. The County has a mandatory and ministerial duty to comply with the terms of this Court's April 24, 2013, and May 4, 2015 judgments and writs in this case, including the directive that the County comply fully with CEQA.

34. Petitioner is entitled to a further supplemental writ of mandate requiring the County to set aside the offending portions of the Revised CAP, Supplemental EIR and associated documents of approval, to revoke and set aside the approval of the Guidelines, Threshold of Significance, and Checklist, and to revoke and set aside the General Plan Amendments, all as approved on February 14, 2018, unless and until the County has fully complied with the judgments of this Court and with CEQA. This compliance includes completing and adopting a legally adequate CAP, completing and certifying a legally adequate EIR and associated documents, and adopting legally adequate Guidelines and Threshold(s) of Significance.

35. The County has failed to prepare and adopt a legally adequate CAP in that it relies for a significant portion of its projected GHG emissions reductions on the obtaining of offsets, which will likely be chiefly obtained from outside the County. The CAP allows offsets to be bought. Private market entities, commonly called offset "registries," purport to record and list programs or projects to reduce GHG emissions, supposedly verified, and which are not required

by other laws or regulations, but are to be carried out for the purpose of creating offsets. The registries then facilitate the sale of such GHG emissions reductions to businesses, government agencies, environmental groups, or other entities who wish to use the offsets to meet permit or other legal requirements to reduce their own GHG emissions. The CAP allows offsets to be identified by these private market registries if they merely demonstrate their purported competence "to the satisfaction" of the County's Director of Planning and Development Services ("Director"). No criteria are specified for the Director's "satisfaction."

36. The use of such offsets as mitigation for increases in GHG emissions from projects or activities under the CAP violates CEQA's requirement that mitigation measures be additional to any other legal requirement or existing program, and be fully enforceable (CEQA Guidelines, §§ 15126.4(a) and (c), 15183.5(b)(1)(D)), in that there is no substantial evidence that the out-of-County offsets allowed by the CAP will meet those criteria, or that the private registries recognized by the Director will list offsets that meet these criteria.

37. The County has violated CEQA by failing to provide full and legally adequate mitigation for the GHG impacts of the GPU. Although they were purportedly prepared to mitigate the GHG emissions impacts of the GPU, pursuant to GPU Mitigation Measure CC-1.2, the Revised CAP and the Supplemental EIR expressly deny that the CAP is such mitigation. Master Response to Comments number 13 in the final EIR for the Revised CAP states that: "[T]he CAP's GHG reduction measures themselves are not specifically 'mitigation measures' as defined under CEQA, nor are they specifically identified as mitigation in either the 2011 GPU PEIR or the Draft SEIR for the CAP." (FSEIR, p. 8-53.) As a result, the GPU lacks mitigation for its GHG emissions impacts on climate destabilization, in violation of CEQA. (Pub. Res. Code §§ 21002, 21081; CEQA Guidelines § 15091.)

38. The County has violated CEQA in that Measure T-4.1 of the CAP, a County initiative to invest in programs and projects that will result in GHG reductions, does not conform to CEQA's requirement that mitigation measures be fully enforceable, and the County's claims for its enormous level of GHG emissions reductions are not supported by substantial evidence. The T-4.1 measure, which is denominated a "County initiative" and not a

regulation or ordinance, would require the County to identify programs and individual projects that have the potential to reduce GHG emissions, and to select and invest in a sufficient number of such programs and projects to achieve nearly half the total of GHG emissions reductions that the CAP states the County must achieve. The CAP gives as examples of such programs and projects the retrofitting of houses with solar panels, the stocking of the County's own vehicle fleet with non-carbon dioxide-emitting vehicles, and the application of soil enhancers to agricultural land to increase the growth and spread of carbon dioxide-sequestering vegetation. However, neither the Revised CAP nor the Supplemental EIR commits the County to the selection of any of these programs or projects, and contains no deadlines or milestones for funding or carrying out any of them. In fact, shortly before adoption of the CAP, County staff stated that they were still performing feasibility studies to determine the cost and cost-effectiveness of possible T-4.1 programs and projects, but gave no definite date for their completion. Such studies, which should have been completed before the CAP was proposed for adoption, show that the County is still uncertain as to what T-4.1 programs and/or projects will be selected, and what criteria will be used to select them. In short, T-4.1 is uncertain and unenforceable, in violation of CEQA Guidelines § 15126.4(a)(2).

39. Measure T-4 also violates CEQA in that it defers the selection by the County of any of the potential GHG-reducing programs and projects to an unspecified future time and provides no criteria or performance standards for their success, in derogation of CEQA Guidelines § 15126.4(a)(1)(B). Without deadlines for the implementation of projects, or criteria for their success, the County lacks substantial evidence that Measure T-4.1 will actually decrease GHG emissions, or to what degree. This violates CEQA's requirements for mitigation.

40. The EIR is a document of public accountability. (*Laurel Heights Improvement Assn. v. Regents of the University of California* (1988) 47 Cal.3d 376, 392.) This EIR fails that crucial role. The General Plan's Mitigation Measure CC-1.2 requires a CAP that reduces the

GHG emissions from *County* operations by 17% (totaling 23, 572 MTCO2e[1]) and from community activities *in the unincorporated County* by 9%, measuring from their 2006 levels to the 2020 levels expected to be achieved by the CAP. However, the EIR does not make clear whether such in-County reductions will actually occur. The combination of allowing the use of out-of-County GHG emissions offsets, together with the reliance on T-4 County investments whose identity, efficacy, and completion dates are not specified, makes it impossible to determine whether the CAP will achieve the amounts of GHG emissions reductions within the County that the GPU promised, or whether the bulk of those emissions reductions – assuming they occur at all – will occur outside the County. This is crucial information for both decision-makers and the public, both because the public needs to know whether the County has kept its commitments in the GPU, and because, as alleged above, in-County GHG reductions will often come with co-benefits such as reduced emissions of conventional health-damaging pollutants, or the creation of jobs to carry out GHG reduction programs, such as installing solar panels on rooftops. The public is entitled to know whether the County has chosen an approach to GHG reduction whose co-benefits will be felt in the County, or whether those co-benefits will be enjoyed by other areas.

41. Further, where mitigation measures may have significant environmental impacts of their own CEQA requires that those impacts must also be analyzed and disclosed. (CEQA Guidelines § 15126.4(a)(1)(D).) The County has violated CEQA by failing to make such an analysis and disclosure here.

---

[1] "MTCO2e," or "metric tons of carbon dioxide equivalent," is a commonly used measurement for GHG emissions. The climate-destabilizing strength of different GHGs differs widely. To simplify matters, their amounts are usually presented based on a comparison of their climate-destabilizing power to the climate-destabilizing power of carbon dioxide (CO2), the most prevalent GHG. One ton of carbon dioxide emissions is represented as 1 MTCO2e. However, since methane is about 20 times more powerful at climate destabilization as carbon dioxide, one ton of methane is represented as if it were an equivalent amount of carbon dioxide, or 20 MTCO2e, with the "e" standing for "equivalent." The metric scale is used to measure these amounts so that discussions of GHG emissions worldwide will all be in the same measurement unit.

42. CEQA requires that an EIR "shall discuss any inconsistencies between the proposed project and applicable general plans, specific plans, and *regional plans*." (CEQA Guidelines § 15125(d); emphasis added.) The EIR violates CEQA by failing to analyze and discuss the consistency of the Revised CAP, and the Guidelines and New Threshold adopted with it, on the Regional Transportation Plan and Sustainable Communities Strategy ("RTP/SCS") prepared by SANDAG under Government Code §§ 65080, et seq. (commonly referred to as SB 375) for the purpose, inter alia, of using transportation funding and projects to support more compact land uses that reduce GHG emissions by reducing sprawl and the increased driving sprawl causes. (*Cleveland National Forest Foundation v. San Diego Assn of Governments* (2017) 17 Cal.App.5th 413, 430.) The County's approval of the Guidelines and the New Threshold may allow the approval of large residential developments in rural areas far from transit, thereby increasing driving and VMT over the amounts assumed by SANDAG in its RTP/SCS. The County's actions foster increases in VMT, but the EIR does not present an analysis of this growth, or its reasonably foreseeable impacts on the SANDAG plan.

43. SANDAG used a computer-based model to estimate the VMT to be expected in the future in the San Diego area. This model used assumptions as to whether growth would occur that were provided by local governments, including the County. However, the Guidelines and New Threshold may allow approval of large and significant projects that were not in the information contained in the SANDAG model. Yet, despite requests from SANDAG and others, the County did not re-run the SANDAG model using reasonable assumptions as to the new projects whose approval might be made possible by adoption of the Guidelines and New Threshold, to determine whether or not the County's action was consistent with the SANDAG RTP/SCS. This violated CEQA Guidelines § 15125(d).

44. In addition to its failure to analyze and discuss the impact on the RTP/SCS that the County's approval of the Guidelines and New Threshold may have, the EIR also fails as an informational document in that it does not analyze, disclose, or mitigate potential impacts of the Guidelines and New Threshold on potential increased VMT in the County, or on the resultant

increase in emissions, both of GHGs and of conventional pollutants, or on the increased use of energy resources in the form of fossil fuel combustion.

45. The California Supreme Court has called the mitigation and alternatives section "the core of an EIR." (*Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal. 3d 553, 564.) Here, the County did not adequately consider mitigation measures for inclusion in the CAP that were proposed by the Sierra Club and others. These included, for example, a shift in the use of parking to provide an incentive for reduced driving. The County's failure to adequately analyze such alternative measures and the County's rejection of such measures without substantial evidence violated CEQA's mandate that projects with significant impacts should not be approved where mitigation measures are available that would substantially lessen the significant environmental impacts of the projects. (Pub. Res. Code § 21002.)

45. In addition, the County violated CEQA by failing to adequately consider alternatives, such as the regional-plan-based alternative approach to the exercise of its land use powers proposed by Petitioner Endangered Habitats League to require that in newly planned projects, a "fair share" of VMT reduction occur, consistent with the regional VMT reductions anticipated by the SANDAG RTP/SCS (about 15%), requiring that newly planning development be focused within SANDAG Smart Growth Opportunity Areas, and requiring that a minimum percent of newly planned project GHG emission reductions occur on-site.

46. The EIR violates CEQA by making inadequate and dismissive responses to comments from the public and from other governmental agencies. An example is the County's response to comments questioning the analysis of the impact of the Revised CAP, the Guidelines, and the New Threshold of Significance on the SANDAG RTP/SCS. The EIR evasively responds that it is SANDAG's responsibility to ensure that the region complies with SB 375 through the RTP/SCS, "though it is acknowledged that the County is one of many agencies that comprise the region in helping SANDAG achieve this goal." (FEIR, p. 8-15.) The response ignores the fact that the RTP/SCS is based on land uses prescribed by local jurisdictions that establish the development patterns that are permitted, and SANDAG has no authority to alter these land uses. The County's response also ignores the elephant-in-the-room

fact that the County is such a jurisdiction, having plenary land use authority over *82% of the County's land* and, presumably, responsibility for "helping SANDAG" that is proportional to that degree of land use power and authority. An agency must provide "good faith, reasoned analysis" in response to comments on an EIR, per CEQA Guidelines § 15088(c). Here, the County has failed to make such a good faith, reasoned analysis of how its use of its land use power, and its adoption of the Revised CAP, the Guidelines, and the New Threshold of Significance, will "help" or harm SANDAG carry out the RTP/SCS. This violates CEQA.

47. Government Code § 65040.12 defines "environmental justice" as "the fair treatment of people of all races, cultures, and incomes with respect [as] to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies." Here, the County has chosen not to accord such fair treatment to the many minority and low-income residents of the San Diego region. The failure of the County's Revised CAP, Guidelines, and New Threshold to contain enforceable strategies and measures to reduce GHG emissions can reasonably be expected to result in a failure of the Revised CAP to contribute San Diego's fair share of the GHG reductions required by AB 32 and SB 32. The consequences of this failure, such as increased wildfires, more severe and persistent droughts, and scarcer and more expensive water, will fall most heavily on environmental justice populations, just as the consequences of the County's permission for itself and developers to allow the purchase and use of GHG offsets to other geographic areas will deprive local environmental justice populations of the co-benefits (jobs, reduced conventional air pollutant emissions from driving) of those offsets. The EIR does not provide a full analysis and disclosure of these impacts on particularly vulnerable populations, in violation of CEQA's mandate of full public disclosure.

48. In each of the respects enumerated above, Respondent County of San Diego has violated its duties under the law, abused its discretion, failed to proceed in the manner required by law, and decided the matters complained of without the support of substantial evidence, all in violation of CEQA. It is imperative that the County have a legally valid CAP and Threshold in place as soon as possible to guide new development and ensure the County is able to meet its GHG emission reduction targets.

PRAYER

WHEREFORE, Petitioner prays for relief as follows:

1. For an alternative and peremptory writ of mandate commanding Respondent County to immediately vacate and set aside its approvals of the Guidelines, Threshold, Checklist, and Mitigation Measure M-GHG-1 as identified in this Petition, and to refrain from relying upon them in any form in the processing of permits for development projects on unincorporated County lands;

2. For an alternative and peremptory writ of mandate commanding the County to revise its Climate Action Plan within one year of the date of writ issuance so that the Climate Action Plan and its supporting CEQA analysis fully comply with CEQA and all other applicable laws, including, but not limited to, the inclusion in the Climate Action Plan of verifiable and fully enforceable requirements for reductions in GHG emissions to all state-mandated levels, and deadlines and milestones for achieving the same;

3. For an alternative and peremptory writ of mandate commanding the County to file returns to the writ every 90 days detailing the progress being made to comply with CEQA; requiring that the County provide a list within the first 90-day period of all the mitigation measures recommended by members of the public or by County staff that were not incorporated into the Revised CAP, along with the County's evidence that those measures were either infeasible or would fail to achieve required emissions reductions; and within 120 days of issuance of the Writ, meet with Petitioners and other stakeholders to discuss adoption of additional mitigation measures that would achieve the emissions reduction goals set forth by the State;

4. For costs of this suit;

5. For reasonable attorneys' fees; and

6. For such other relief as this Court deems just and proper.

DATE: March 16, 2018

Respectfully Submitted,

CHATTEN-BROWN & CARSTENS

By: /s Josh Chatten-Brown
Josh Chatten-Brown
Jan Chatten-Brown
Susan L. Durbin
Attorneys for Petitioner

VERIFICATION

I, George Courser, declare as follows:

I am an officer of the Sierra Club. I have read the foregoing THIRD SUPPLEMENTAL PETITION FOR WRIT OF MANDATE and know the contents thereof, and the same is true of my own knowledge.

I declare under penalty of perjury that the foregoing is true and correct and that this verification was executed on the 16th day of March, 2018 at San Diego, California.

George Courser

EXHIBIT A

Hermosa Beach Office
Phone: (310) 798-2400
Fax: (310) 798-2402

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CBC
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Josh Chatten-Brown
Email Address:
jrcb@cbcearthlaw.com

Direct Dial:
619-940-4522

March 16, 2018

By U.S. Mail
California Attorney General
600 W. Broadway 1800
San Diego, CA 92101

Re: Challenge to the County of San Diego's Approval of Revised Climate Action Plan and Supplemental Environmental Impact Report

Honorable Attorney General:

Please find enclosed a copy of the Petition for Writ of Mandate filed to request the San Diego Superior Court order the County of San Diego to set aside the portions of the Revised Climate Action Plan and Supplemental Environmental Impact Report that that violate the California Environmental Quality Act

This Petition is being provided pursuant to the notice provisions of the Public Resources Code. Please contact me if you have any questions.

Sincerely,

Josh Chatten-Brown

Enclosure

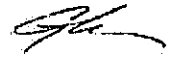
PROOF OF SERVICE

I am employed by Chatten-Brown & Carstens LLP in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 2200 Pacific Coast Highway, Ste. 318, Hermosa Beach, CA 90254 . On March 16, 2018, I served the within documents:

LETTER TO THE CALIFORNIA ATTORNEY GENERAL REGARDING PETITION FOR WRIT OF MANDATE

[X] **VIA UNITED STATES MAIL.** I am readily familiar with this business' practice for collection and processing of correspondence for mailing with the United States Postal Service. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid. I enclosed the above-referenced document(s) in a sealed envelope or package addressed to the person(s) at the address(es) as set forth below, and following ordinary business practices I placed the package for collection and mailing on the date and at the place of business set forth above.

I declare that I am employed in the office of a member of the bar of this court whose direction the service was made. I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on March 16, 2018, at Hermosa Beach, California 90254.



Cynthia Kellman

SERVICE LIST

California Attorney General
600 W. Broadway, #1800
San Diego, CA 92101

EXHIBIT B

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Email Address:
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Direct Dial:
619-940-4522

March 15, 2018

By U.S. Mail
Ernest J. Dronenburg, Jr.
County Clerk
1600 Pacific Highway, Suite 260
San Diego, CA 92101

Re: Challenge to the County of San Diego's Approval of Revised Climate Action Plan and Supplemental Environmental Impact Report
Sierra Club v. County Of San Diego

Dear Mr. Dronenburg:

Pursuant to Public Resources Code section 21167.5, please take notice Sierra Club plans to file a petition for writ of mandate requesting the Superior Court order the County of San Diego to set aside the portions of the Revised Climate Action Plan and Supplemental Environmental Impact Report that violate the California Environmental Quality Act. This petition will be filed against the County of San Diego in San Diego Superior Court, 330 West Broadway, San Diego, CA 92101

Sincerely,

Josh Chatten-Brown

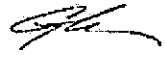
PROOF OF SERVICE

I am employed by Chatten-Brown & Carstens LLP in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 2200 Pacific Coast Highway, Ste. 318, Hermosa Beach, CA 90254 . On March 15, 2018, I served the within documents:

LETTER TO THE CLERK OF THE COUNTY OF SAN DIEGO

[X] **VIA UNITED STATES MAIL.** I am readily familiar with this business' practice for collection and processing of correspondence for mailing with the United States Postal Service. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid. I enclosed the above-referenced document(s) in a sealed envelope or package addressed to the person(s) at the address(es) as set forth below, and following ordinary business practices I placed the package for collection and mailing on the date and at the place of business set forth above.

I declare that I am employed in the office of a member of the bar of this court whose direction the service was made. I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on March 15, 2018, at Hermosa Beach, California 90254.



Cynthia Kellman

SERVICE LIST

Ernest J. Dronenburg, Jr.
County Clerk
1600 Pacific Highway, Ste. 260
San Diego, CA 92101

EXHIBIT C

CHATTEN-BROWN & CARSTENS LLP
Jan Chatten-Brown (SBN 050275)
Josh Chatten-Brown (SBN 243605)
Susan Durbin (SBN 81750)
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San Diego, CA 92103
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Fax: 310-798-2402

Attorneys for Petitioner Sierra Club

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

SIERRA CLUB, Petitioner, v. COUNTY OF SAN DIEGO, Respondent.	CASE NO.: 37-2012-00101054-CU-TT-CTL **NOTICE OF ELECTION TO PREPARE THE ADMINISTRATIVE RECORD** **IMAGED FILE** (CALIFORNIA ENVIRONMENTAL QUALITY ACT) Judge: Hon. Timothy B. Taylor Dept: C-72 Original Petition Filed: July 20, 2012 Mandate Filed: February 18, 2014

Petitioner Sierra Club hereby gives notice pursuant to Public Resource Code section 21167.6 that Petitioner elect to prepare the administrative record in the above-entitled action.

DATE: March 16, 2018

Respectfully Submitted,

CHATTEN-BROWN & CARSTENS

By: _____

Josh Chatten-Brown
Jan Chatten-Brown
Attorneys for Petitioner

PROOF OF SERVICE

I am employed by Chatten-Brown & Carstens LLP in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 2200 Pacific Coast Highway, Ste. 318, Hermosa Beach, CA 90254. On March 20, 2018, I served the within documents:

THIRD SUPPLEMENTAL PETITION

FOR WRIT OF MANDATE

☐ **VIA UNITED STATES MAIL.** I am readily familiar with this business' practice for collection and processing of correspondence for mailing with the United States Postal Service. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid. I enclosed the above-referenced document(s) in a sealed envelope or package addressed to the person(s) at the address(es) as set forth below, and following ordinary business practices I placed the package for collection and mailing on the date and at the place of business set forth above.

☐ **VIA OVERNIGHT DELIVERY.** I enclosed the above-referenced document(s) in an envelope or package designated by an overnight delivery carrier with delivery fees paid or provided for and addressed to the person(s) at the address(es) listed below. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

☒ **VIA ONE LEGAL E-SERVICE.** By submitting an electronic version of the document(s) to One Legal, LLC, through the user interface at www.onelegal.com.

I declare that I am employed in the office of a member of the bar of this court whose direction the service was made. I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on March 20, 2018, at Hermosa Beach, California.

Cynthia Kellman

SERVICE LIST

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EXHIBIT 3

Summary
11/21/2018 1:04:25 PM

Differences exist between documents.

New Document:	**Old Document:**
First Amended Complaint v6	Complaint
186 pages (2.61 MB)	102 pages (874 KB)
11/21/2018 1:03:38 PM	11/21/2018 1:03:37 PM
Used to display results.	

Get started: first change is on page 1.

No pages were deleted

How to read this report

Highlight indicates a change.
~~**Deleted**~~ indicates deleted content.
indicates pages were changed.
indicates pages were moved.

Jennifer L. Hernandez (State Bar No. 114951)
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Attorneys for Plaintiffs/Petitioners
THE TWO HUNDRED, *et al.*

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF FRESNO

UNLIMITED CIVIL JURISDICTION

THE TWO HUNDRED, an unincorporated association of civil rights leaders, including LETICIA RODRIGUEZ, TERESA MURILLO, and EUGENIA PEREZ, Plaintiffs/Petitioners, v. CALIFORNIA AIR RESOURCES BOARD, RICHARD COREY, in his Official Capacity, and DOES 1-50, Respondents/Defendants.	Case No. 18CECG01494 **FIRST AMENDED[1] VERIFIED PETITION FOR WRIT OF MANDATE; COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF** **[Code Civ. Proc. §§ 1085, 1094.5, 1060, 526; Gov. Code § 12955 *et seq.* (FEHA); 42 U.S.C. § 3601 *et seq.* (FHA); Cal. Const. Art. I, § 7; Art. IV, § 16; U.S. Const. Amd. 14, § 1; 42 U.S.C. § 1983; Pub. Res. Code § 12000 *et seq.* (CEQA); Gov. Code § 11346 *et seq.* (APA); H&S Code § 38500 *et seq.* (GWSA); H&S Code § 39000 *et seq.* (CCAA); Gov. Code § 65088 *et seq.* (Congestion Management Plan)]**

[1] Principal added allegations are set out in **bold** font. A full "redline" comparing this First Amended Petition/Complaint with the original Petition/Complaint and showing all changes is attached as Exhibit 3. Principal substantive additions to the Petition/Complaint appear starting at paragraph 262.

Table of Contents

Page

I. INTRODUCTION AND SUMMARY OF REQUESTED RELIEF 4

A. California's Greenhouse Gas Policies and Housing-Induced Poverty Crisis 4

B. California's Historical Use of Environmental and Zoning Laws and Regulations to Oppress and Marginalize Minority Communities 10

C. Four New GHG Housing Measures in CARB's 2017 Scoping Plan Are Unlawful, Unconstitutional, and Would Exacerbate the Housing-Induced Poverty Crisis 12

II. JURISDICTION AND VENUE 21

III. PARTIES 22

IV. GENERAL ALLEGATIONS 32

A. California's Statutory Scheme To Reduce Greenhouse Gas Emissions and Avoid Disparate Impacts. 32

B. The 2017 Scoping Plan 34

C. CARB's Improper "Cumulative Gap" Reduction Requirement 36

D. The Four New, Unlawful GHG Housing Measures the 2017 Scoping Plan Authorizes 42

1. Unlawful VMT Reduction Requirement 42

2. Unlawful CEQA Net Zero GHG Threshold 48

3. Unlawful Per Capita GHG Targets for Local Climate Action Plans 54

4. Appendix C "Vibrant Communities" Policies Incorporating Unlawful VMT, "Net Zero" and CO2 Per Capita Standards 59

E. CARB's Inadequate Environmental Analysis and Adverse Environmental Effects of the 2017 Scoping Plan 65

1. Deficient Project Description 66

2. Improper Project Objectives 67

3. Illegal Piecemealing 69

4. Inadequate Impact Analysis 69

F. CARB's Insufficient Fiscal Analysis and Failure To Comply with the APA's Cost-Benefit Analyis Requirements. 73

G. The Blatantly Discriminatory Impacts of CARB's 2017 Scoping Plan 76

H. CARB'S GHG Housing Measures Are "Underground Regulations" and Ultra Vires 107

Table of Contents (Continued)

Page

FIRST CAUSE OF ACTION (Fair Employment and Housing Act, Gov. Code § 12955 *et seq.*) 108

SECOND CAUSE OF ACTION (Federal Housing Act and HUD Regulations, 42 U.S.C. § 3601 *et seq.*; 24 C.F.R. Part 100) 109

THIRD CAUSE OF ACTION (Denial of Due Process, Cal. Const. Art. I, § 7; U.S. Const. Amd. 14, § 1) 111

FOURTH CAUSE OF ACTION (Denial of Equal Protection, Cal. Const. Art. I, § 7, Art. IV § 16; U.S. Const. Amd. 14, § 1) 111

FIFTH CAUSE OF ACTION (Violations of CEQA, Pub. Res. Code § 21000 *et seq.* and CEQA Guidelines, 14 C.C.R. § 15000 *et seq.*) 112

SIXTH CAUSE OF ACTION (Violations of APA, Gov. Code § 11346 *et seq.*) 116

SEVENTH CAUSE OF ACTION (Violations of the California Global Warming Solutions Act, Health & Safety Code § 38500 *et seq.*) 118

EIGHTH CAUSE OF ACTION (Violations of the Health & Safety Code, § 39000 *et seq.*, including the California Clean Air Act, Stats. 1988, ch. 1568 (AB 2595)) 120

NINTH CAUSE OF ACTION (Violations of the APA – Underground Regulations, Gov. Code § 11340 – 11365) 123

TENTH CAUSE OF ACTION (Ultra Vires Agency Action, Cal. Code of Civil Proc. § 1085) 124

PRAYER FOR RELIEF 126

I. INTRODUCTION AND SUMMARY OF REQUESTED RELIEF

A. California's Greenhouse Gas Policies and Housing-Induced Poverty Crisis

1. California's reputation as a global climate leader is built on the state's dual claims of substantially reducing greenhouse gas ("GHG") emissions while simultaneously enjoying a thriving economy. Neither claim is true.

2. California has made far less progress in reducing GHG emissions than other states. Since the effective date of California's landmark GHG reduction law, the Global Warming Solutions Act,[2] 41 states have reduced per capita GHG emissions by more than California

3. California's lead climate agency, the California Air Resources Board ("CARB"), has ignored California's modest scale of GHG reductions, as well as the highly regressive costs imposed on current state residents by CARB's climate programs.

4. Others have been more forthcoming. Governor Jerry Brown acknowledged in 2017 that the state's lauded cap-and-trade program, which the non-partisan state Legislative Analysist's Office ("LAO") concluded would cost consumers between 24 cents and 73 cents more per gallon of gasoline by 2031,[3] actually "is not that important [for greenhouse gas reduction]. I know that. I'm Mr. 'It Ain't That Much.' It isn't that much. Everybody here [in a European climate change conference] is hype, hype to the skies."[4]

5. Governor Brown's acknowledgement was prompted by a report from Mother Jones—not CARB—that high rainfall had resulted in more hydroelectric power generation from

---

[2] The Global Warming Solutions Act of 2006 ("GWSA") is codified at Health and Safety Code ("H&S Code") § 38500 *et seq.* and became effective in 2007. The Act is often referred to as "AB 32", the assembly bill number assigned to the legislation. AB 32 required California to reduce GHG emissions from a "business as usual" scenario in 2020 to the state's 1990 GHG emission level. AB 32 was amended in 2017 by Senate Bill 32 by the same author. SB 32 established a new GHG reduction mandate of 40% below California's 1990 GHG levels by 2030.

[3] LAO, Letter to Assembly Member Fong (Mar. 29, 2017), www.lao.ca.gov/letters/2017/fong-fuels-cap-and-trade.pdf.

[4] Julie Cart, *Weather Helped California's Greenhouse Gas Emissions Drop 5% Last Year*, CALMatters (Dec. 2, 2017), https://timesofsandiego.com/tech/2017/12/02/weather-helped-californias-greenhouse-gas-emissions-drop-5-last-year/.

existing dams than had occurred during the drought, and that this weather pattern resulted in a 5% decrease in California's GHG emissions.[5]

6. GHG emissions data from California's wildfires are also telling. As reported by the *San Francisco Chronicle* (again not CARB), GHG emissions from all California regulatory efforts "inched down" statewide by 1.5 million metric tons (from total estimated emissions of 440 million metric tons),[6] while just one wildfire near Fresno County (the Rough Fire) produced 6.8 million metric tons of GHGs, and other fires on just federally managed forest lands in California emitted 16 million metric tons of GHGs.[7]

7. Reliance on statewide economic data for the false idea that California's economy is thriving conflates the remarkable stock market profits of San Francisco Bay Area technology companies with disparate economic harms and losses suffered by Latino and African American Californians statewide, and by white and Asian American Californians outside the Bay Area.

8. Since 2007, which included both the global recession and current sustained period of economic recovery, California has had the highest poverty rate in the country—over 8 million people living below the U.S. Census Bureau poverty line when housing costs are taken into account.[8] By another authoritative poverty methodology developed by the United Way of California, which counts housing as well as other basic necessities like transportation and medical costs (and then offsets these with state welfare and related poverty assistance programs), about 40% of Californians "do not have sufficient income to meet their basic cost of living."[9] The

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[5] *Ibid.*

[6] California Air Resources Board, 2017 Edition California Greenhouse Gas Inventory for 2000-2015 (June 2017), https://www.arb.ca.gov/cc/inventory/data/data.htm.

[7] David R Baker, *Huge wildfires can wipe out California's greenhouse gas gains,* SF Chronicle, (Nov. 21, 2017), https://www.sfchronicle.com/bayarea/article/Huge-wildfires-can-wipe-out-California-s-12376324.php.

[8] Liana Fox, The Supplemental Poverty Measure: 2016, U.S. Census Bureau Report Number: P60-261, Table A-5 (Sept. 21, 2017), https://www.census.gov/library/publications/2017/demo/p60-261.html; Dan Walters, *Why does California have the nation's highest poverty level?*, CALMatters (Aug. 13, 2017), https://calmatters.org/articles/california-nations-highest-poverty-level/.

[9] Betsy Block et al., Struggling to Get By: The Real Cost Measure in California 2015, United Ways of California (2016), https://www.unitedwaysca.org/realcost.

Public Policy Institute of California used a methodology that also accounts for the cost of living and independently concluded that about 40% of Californians live in poverty.[10]

9. Poverty is just one of several indicators of the deep economic distress affecting California. California also has the highest homeless population, and the highest homelessness rate, in the nation. According to the U.S. Department of Housing and Urban Development, about 25% of the nation's homeless, or about 135,000 individuals, are in California.[11]

10. National homeownership rates have been recovering since the recession levels, but California's rate has plunged to the second lowest in the country—with homeownership losses steepest and most sustained for California's Latinos and African Americans.[12]

11. As shown in Figure 1, with the exception of white and Asian populations in the five-county Bay Area, elsewhere in California—and for Latino and African American residents statewide—incomes are comparable to national averages.

Figure 1

Median Income in 2007 and 2017, White, Asian, Latino and Black Populations

Bay Area, California excluding the Bay Area, and U.S. excluding California

(nominal current dollars)[13]

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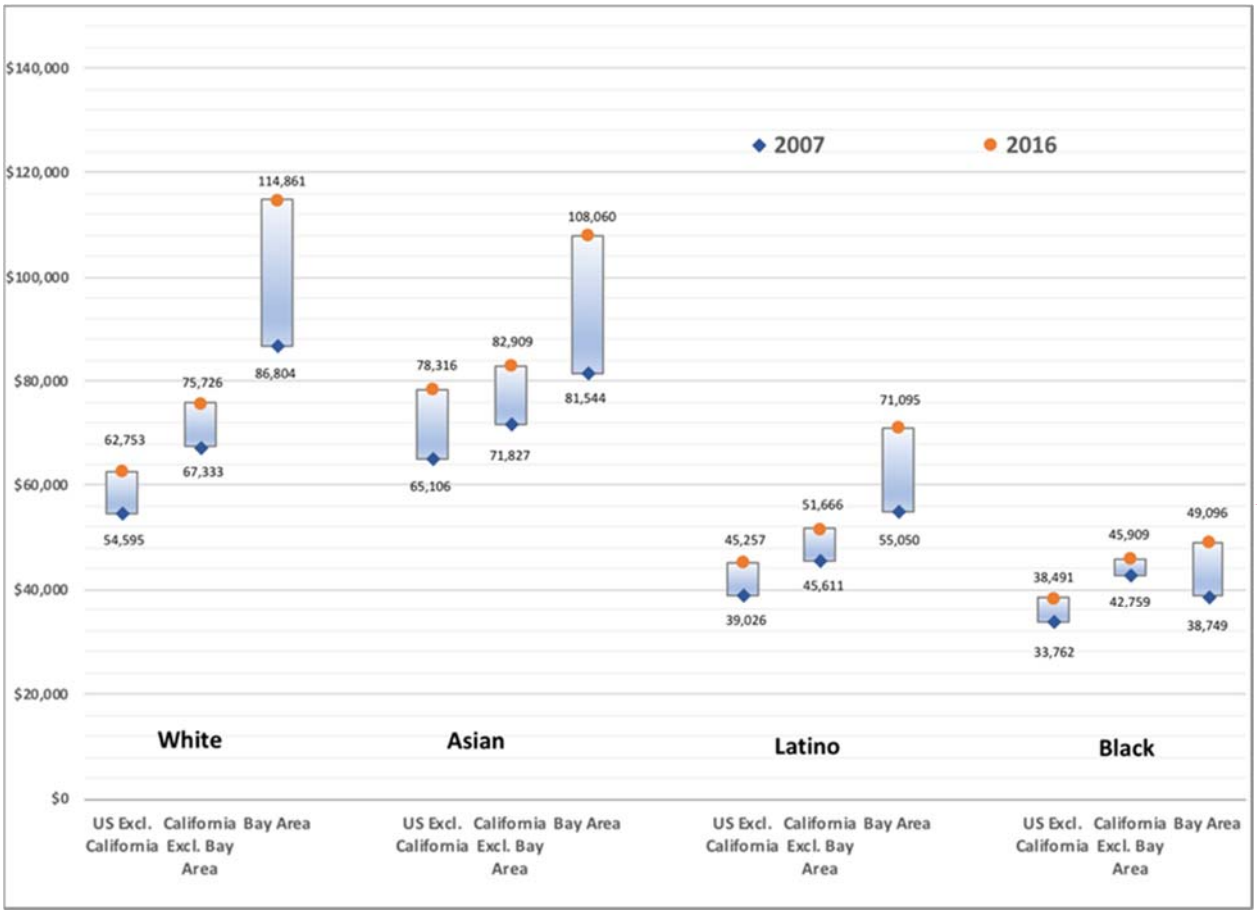
[10] Public Policy Institute of California, Poverty in California (Oct. 2017), http://www.ppic.org/publication/poverty-in-california/.

[11] U.S. Department of Housing and Urban Development, 2017 Annual Homeless Assessment Report to Congress, https://www.hudexchange.info/resources/documents/2017-AHAR-Part-1.pdf; Kevin Fagan et al., *California's homelessness crisis expands to country*, SF Chronicle (Sept. 8, 2017), https://www.sfchronicle.com/news/article/California-s-homelessness-crisis-moves-to-the-12182026.php.

[12] U.S. Census Bureau, Housing Vacancies and Homeownership (CPS/HVS), Table 16. Homeownership Rates for the 75 Largest Metropolitan Statistical Areas: 2015 to 2017, https://www.census.gov/housing/hvs/data/ann17ind.html. See also 2007 and 2016 American Community Survey 1-Year Estimates, Table B25003 series (Tenure in Occupied housing units), California, https://factfinder.census.gov/.

[13] Median income estimated from household income distributions for 2007 and 2016 American Community Survey 1-Year Estimates, Table B19001 series, https://factfinder.census.gov/ (using the estimation methodology described by the California Department of Finance at http://www.dof.ca.gov/Forecasting/Demographics/Census_Data_Center_Network/documents/How_to_Recalculate_a_Median.pdf).



12. However, Californians pay far higher costs for basic necessities. A national survey of housing, food, medical and other costs conducted by the Council for Community & Economic Research showed that in 2017, California was the second most expensive state in the nation (after Hawaii), and had a cost of living index that was 41% higher than the national average.[14] The LAO reported that "California's home prices and rents are higher than just about anywhere else," with average home prices 2.5 times more than the national average and rents 50% higher than the national average.[15] Californians also pay 58% more in average electricity cost per KWh hour (2016 annual average)[16] and about $0.80 cents more per gallon of gas than the national average.[17]

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[14] The 2017 survey by the Council for Community & Economic Research was published by the Missouri Economic Research and Information Center, https://www.missouri economy.org/indicators/cost_of_living/index.stm.

[15] LAO, California's High Housing Costs: Causes and Consequences (Mar. 17, 2015), http://www.lao.ca.gov/reports/2015/finance/housing-costs/housing-costs.aspx.

[16] U.S. Energy Information Agency, Electric Power Annual, Table 2.10 (Dec. 2, 2017), https://www.eia.gov/electricity/annual/ (showing average annual 2016 prices).

[17] American Automobile Association, Regular Gas Prices, http://gasprices.aaa.com/state-gas-price-averages/, last visited April 25, 2018.

13. These high costs for two basic living expenses—electricity and transportation—are highest for those who live in the state's inland areas (and need more heating and cooling than the temperate coast), and drive farthest to jobs due to the acute housing crisis the LAO has concluded is worst in the coastal urban job centers like the San Francisco Bay Area and Los Angeles.[18]

14. An estimated 138,000 commuters enter and exit the nine-county Bay Area megaregion each day.[19] These are workers who are forced to "drive until they qualify" for housing they can afford to buy or rent.

15. San Joaquin County housing prices in cities nearest the Bay Area, such as Stockton, are about one-third lower, even though commute times to San Jose are 77 minutes each direction (80 miles and 2.5 hour daily commutes), and to San Francisco are 80 minutes (82 miles and 3 hour daily commutes).[20] The median housing price in Stockton is about $286,000—still double the national average of $140,000—while the median housing price in San Jose is over $1,076,000 and in San Francisco is over $1,341,000.[21]

16. California's poverty, housing, transportation and homeless crisis have created a perfect storm of economic hardship that has, in the words of the civil rights group Urban Habitat, resulted in the "resegregation" of the Bay Area.[22] Between 2000 and 2014, substantial African American and Latino populations shifted from central cities on and near the Bay, like San Francisco, Oakland, Richmond and San Jose, to eastern outer suburbs like Antioch, and Central Valley communities like Stockton and Suisun City.[23] As reported:

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[18] LAO, California's High Housing Costs: Causes and Consequences (Mar. 17, 2015), http://www.lao.ca.gov/reports/2015/finance/housing-costs/housing-costs.aspx.

[19] Bay Area Council, Another Inconvenient Truth (Aug. 16, 2016), www.bayareaeconomy.org/report/another-inconvenient-truth/.

[20] Commute times from Google navigation, calculated April 25, 2018.

[21] Zillow, Stockton CA Home Prices & Home Values, https://www.zillow.com/stockton-ca/home-values/; San Jose CA Home Prices and Home Values, https://www.zillow.com/san-jose-ca/home-values/; San Francisco CA Home Prices and Home Values, https://www.zillow.com/san-francisco-ca/home-values/.

[22] Urban Habitat League, Race, Inequality, and the Resegregation of the Bay Area (Nov. 2016), http://urbanhabitat.org/new-report-urban-habitat-reveals-growing-inequality-and-resegregation-bay-area-reflecting-divided; see also LAO, Lower Income Households Moving to Inland California from Coast (Sept. 2015), http://www.lao.ca.gov/LAOEconTax/Article/Detail/133.

[23] *Id.* p. 10-11, Maps 5 and 6.

> Low income communities of color are increasingly living at the expanding edges of our region. . . . Those who do live closer to the regional core find themselves unable to afford skyrocketing rents and other necessities; many families are doubling or tripling up in homes, or facing housing instability and homelessness.[24]

17. Los Angeles (#1) and the Bay Area (#3) are already ranked the worst in the nation for traffic congestion, flanking Washington DC (#2).[25] Yet California's climate leaders have decided to intentionally increase traffic congestion—to lengthen commute times and encourage gridlock—to try to get more people to ride buses or take other form of public transit.[26] This climate strategy has already failed, with public transit ridership—particularly by bus—continuing to fall even as California has invested billions in public transit systems.[27]

18. Vehicle miles travelled ("VMT") by Californians forced to drive ever-greater distances to homes they can afford have also increased by 15% between 2000 and 2015.[28] Serious

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[24] *Id.* p. 2.

[25] INRIX Global Traffic Scorecard (2017), http://inrix.com/scorecard/.

[26] Governor's Office of Planning and Research ("OPR"), Updating Transportation Analysis in the CEQA Guidelines, Preliminary Discussion Draft (Aug. 6, 2014), http://www.opr.ca.gov/docs/Final_Preliminary_Discussion_Draft_of_Updates_Implementing_SB_743_080614.pdf, p. 9 (stating that "research indicates that adding new traffic lanes in areas subject to congestion tends to lead to more people driving further distances. (Handy and Boarnet, "DRAFT Policy Brief on Highway Capacity and Induced Travel," (April 2014).) This is because the new roadway capacity may allow increased speeds on the roadway, which then allows people to access more distant locations in a shorter amount of time. Thus, the new roadway capacity may cause people to make trips that they would otherwise avoid because of congestion, or may make driving a more attractive mode of travel"). In subsequent CEQA regulatory proposals, and in pertinent parts of the 2017 Scoping Plan, text supportive of traffic congestion was deleted but the substantive policy direction remains unchanged. Further, the gas tax approved by the Legislature in 2017 was structured to limit money for addressing congestion to $250 million (less than 1% of the $2.88 billion anticipated to be generated by the new taxes). See Jim Miller, *California's gas tax increase is now law. What it costs you and what it fixes.* Sacramento Bee (April 28, 2017), http://www.sacbee.com/news/politics-government/capitol-alert/article147437054.html.

[27] See, e.g., Bay Area Metropolitan Planning Commission, Transit Ridership Report (Sept. 2017), http://www.vitalsigns.mtc.ca.gov/transit-ridership (showing transit ridership decline on a per capita basis by 11% since 1990 with per capita bus boardings declining by 33%); see also University of California Institute for Transportation Studies, Falling Transit Ridership: California and Southern California (Jan. 2018), https://www.scag.ca.gov/Documents/ITS_SCAG_Transit_Ridership.pdf (showing Los Angeles regional public transit decline).

[28] TRIP, California Transportation by the Numbers (Aug. 2016), https://mtc.ca.gov/sites/default/files/CA_Transportation_by_the_Numbers_TRIP_Report_2016.pdf.

adverse health impacts to individual commuters,[29] as well as adverse economic impacts to drivers and the California economy,[30] from excessive commutes have also worsened.

19. In 2016 and 2017, the combination of increased congestion and more VMT reversed decades of air quality improvements in California, and caused increased emissions of both GHG and other traditional air pollutants that cause smog and other adverse health effects,[31] for which reductions have long been mandated under federal and state clean air laws.

20. In short, in the vast majority of California, and for the whole of its Latino and African American populations, the story of California's "thriving" economy is built on CARB's reliance on misleading statewide averages, which are distorted by the unprecedented concentration of stock market wealth created by the Bay Area technology industry.

21. For most Californians, especially those who lost their home in the Great Recession (with foreclosures disproportionately affecting minority homeowners),[32] or who never owned a home and are struggling with college loans or struggling to find a steady job that pays enough to cover California's extraordinary living costs, CARB's assertion that California is a booming, "clean and green" economy is a distant fiction.

B. California's Historical Use of Environmental and Zoning Laws and Regulations to Oppress and Marginalize Minority Communities

22. The current plight of minority communities in California is the product of many decades of institutional racism, perpetuated by school bureaucrats of the 1940's who defended the "separate but equal" system, highway bureaucrats of the 1950's who targeted minority neighborhoods for demolition to make way for freeway routes, urban planning bureaucrats in the

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[29] Carolyn Kylstra, *10 Things Your Commute Does to Your Body*, Time Magazine (Feb. 2014), http://time.com/9912/10-things-your-commute-does-to-your-body/.

[30] TRIP, California Transportation by the Numbers (Aug. 2016), https://mtc.ca.gov/sites/default/files/CA_Transportation_by_the_Numbers_TRIP_Report_2016.pdf (stating that traffic congestion is estimated to cost California $28 billion, including lost time for drivers and businesses, and wasted fuels).

[31] Next 10, 2017 CA Green Innovation Index (Aug. 22, 2017), http://next10.org/sites/default/files/2017-CA-Green-Innovation-Index-2.pdf.

[32] Gillian White, *The Recession's Racial Slant*, Atlantic Magazine (June 24, 2015), https://www.theatlantic.com/business/archive/2015/06/black-recession-housing-race/396725/.

1960's who destroyed minority communities in pursuit of redevelopment, and those who enabled decades of "redlining" practices by insurance and banking bureaucrats aimed at denying minorities equal access to mortgages and home insurance.[33]

23. Environmental regulators are no less susceptible to racism and bias than other regulators. Members of The Two Hundred had to intervene when environmental regulators threatened to block construction of the UC Merced campus, which is the only UC campus in the Central Valley and serves the highest percentage of Latino students of any UC campus.[34]

24. Members of The Two Hundred also had to intervene to require environmental regulators to establish clear standards for the cleanup of contaminated property that blighted many minority neighborhoods, where cleanup and redevelopment could not be financed without the standards that virtually all other states had already adopted.[35]

25. Racial bias in environmental advocacy organizations, including those that heavily lobbied CARB in 2017 Scoping Plan proceedings, was also confirmed in an influential study funded by major foundations that contribute to such organizations.[36]

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[33] See Richard Rothstein, Color of Law: A Forgotten History of How Our Government Segregated America (2017).

[34] UC Merced's Latino undergraduates comprise 53% of the student population, compared to the 21% rate of Latino undergraduate enrollment for the UC system as a whole. University of California System Enrollment (2017), https://www.universityofcalifornia.edu/infocenter/fall-enrollment-glance; UC Merced Fast Facts 2017-2018, https://www.ucmerced.edu/fast-facts; see also John Gamboa, Greenlining Institute, Brownfields, UC Merced, and Fighting for Environmental Equity (March 2018), http://greenlining.org/blog/2018/brownfields-uc-merced-fighting-environmental-equity/.

[35] John Gamboa, Greenlining Institute, Brownfields, UC Merced, and Fighting for Environmental Equity (Mar. 2018), http://greenlining.org/blog/2018/brownfields-uc-merced-fighting-environmental-equity/.

[36] Dorceta E. Taylor, Ph.D., The State of Diversity in Environmental Organizations: Mainstream NOGs, Foundations & Government Agencies (July 2014), http://vaipl.org/wp-content/uploads/2014/10/ExecutiveSummary-Diverse-Green.pdf.

26. Additional studies have confirmed racial bias in environmental organizations, and in media reports on environmental issues.[37] As the newest President of the Sierra Club Board of Directors, African American Aaron Mair recently confirmed: "White privilege and racism within the broader environmental movement is existent and pervasive."[38]

27. The simple fact is that vast areas of California, and disproportionately high numbers of Latino and African American Californians, have fallen into poverty or out of homeownership, and California's climate policies guarantee that housing, transportation and electricity prices will continue to rise while "gateway" jobs to the middle class for those without college degrees, such as manufacturing and logistics, will continue to locate in other states.

C. Four New GHG Housing Measures in CARB's 2017 Scoping Plan Are Unlawful, Unconstitutional, and Would Exacerbate the Housing-Induced Poverty Crisis

28. Defendant/Respondent CARB is the state agency directed by the Legislature to implement SB 32, which requires the State to set a target to reduce its GHG emissions to forty percent below 1990 levels by 2030 ("2030 Target").

29. CARB adopts a "Scoping Plan" every five years, as described in the GWSA. The most recent Scoping Plan sets out the GHG reduction measures that CARB finds will be required to achieve the 2030 Target ("2017 Scoping Plan"). The 2017 Scoping Plan was approved in December 2017.

30. The most staggering, unlawful, and racist components of the 2017 Scoping Plan target new housing. The Plan includes four measures, challenged in this action, that increase the cost and litigation risks of building housing, intentionally worsen congestion (including commute

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[37] See, e.g., Nikhil Swaminathan, *The Unsustainable Whiteness of Green*, Moyers & Company (June 30, 2017), https://billmoyers.com/story/unsustainable-whiteness-green/; Jedidiah Purdy, *Environmentalism's Racist History*, The New Yorker (Aug. 13, 2015), https://www.newyorker.com/news/news-desk/environmentalisms-racist-history; Brentin Mock, *The Green Movement Is Talking About Racism? It's About Time*, Outside Magazine (Feb. 27, 2017), https://www.outsideonline.com/2142326/environmentalism-must-confront-its-social-justice-sins.

[38] Nikhil Swaminathan, *The Unsustainable Whiteness of Green*, Moyers & Company (June 30, 2017), https://billmoyers.com/story/unsustainable-whiteness-green/

times and vehicular emissions) for workers who already spend more than two hours on the road instead of with their families, and further increase the cost of transportation fuels and electricity.

31. These newly-adopted measures (herein the "GHG Housing Measures") are: (A) The new VMT mandate; (B) The new "net zero" CEQA threshold; (C) The new CO2 per capita targets for local climate action plans for 2030 and 2050; and (D) The "Vibrant Communities" policies in Appendix C to the 2017 Scoping Plan, to the extent they incorporate the VMT, net zero and new CO2 per capita targets.[39]

32. The presumptive "net zero" GHG threshold requires offsetting GHG emissions for all new projects including housing under CEQA, the "Vibrant Communities" measures include limiting new housing to the boundaries of existing developed communities, and a mandate to substantially reduce VMT even for electric vehicles by (among other means) intentionally increasing congestion to induce greater reliance on buses and other transit modes.

33. The development of, and the measures included in, the 2017 Scoping Plan was required to be informed by an environmental analysis ("EA") pursuant to the California Environmental Quality Act (Pub. Res. Code § 21000 *et seq.*) ("CEQA"), and an economic fiscal analysis ("FA") as mandated by both the GWSA and the Administrative Procedure Act, Gov. Code § 11346 *et seq.* ("APA").

34. However, in one of many examples of the lack of analysis in the 2017 Scoping Plan and related documents, CARB does not disclose the GHG emission reductions it expects from the GHG Housing Measures. The Scoping Plan also omits any economic analysis that accounts for the cost of these measures on today's Californians, and omits any environmental analysis of the Plan's effects on existing California communities and infrastructure.

35. CARB concluded that in 2017 California's entire economy will emit 440 million metric tons of GHGs per year, and that California will need to reduce emissions by 181.8 million

[39] While CARB styled the GHG Housing Measures as "guidelines", they are self-implementing and unlawful underground regulations. All other components of the 2017 Scoping Plan will be implemented as regulations, such as the Cap and Trade program and low carbon fuel standard, and thus will undergo a formal rulemaking process. However, CARB refused to undertake the same legislatively-mandated public process for the four GHG Housing Measures.

metric tons to meet the 2030 Target. Notwithstanding widespread reports, and public and agency concern about the housing crisis, the homelessness crisis, the housing-induced poverty crisis, and the transportation crisis (collectively referred to herein as the "housing crisis"), neither the 2017 Scoping Plan, nor the environmental or economic analyses, disclose how much of this 181.8 million metric ton GHG reduction must or even may be achieved by constructing the at least three million new homes that experts,[40] and all candidates for Governor,[41] agree California must produce to resolve the current housing shortfall.

36. The core elements of the Scoping Plan related to housing call for new housing in California's existing communities (which comprise 4% of California's lands), with smaller multi-family units instead of single family homes located near public transit to reduce VMT. The 2017 Scoping Plan does not contemplate the need for any new regulations to implement this housing regime. Instead, it includes expert agency conclusions about how CEQA, a 1970 environmental law, must be implemented to achieve California's statutory climate change mandates as well as the unlegislated 2050 GHG reduction goal (80% reduction from 1990 GHG emissions by 2050) included in various Executive Orders from California Governors.

37. The best available data on the actual GHG reductions that will be achieved by the Scoping Plan's GHG Housing Measures is the "Right Type, Right Place" report, prepared by a multi-disciplinary team of housing and environmental law experts at the University of California, Berkeley, that examined some of the consequences from the housing crisis solution embedded in the 2017 Scoping Plan's GHG Housing Measures ("UCB Study").[42]

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[40] Jonathan Woetzel et al., Closing California's Housing Gap, McKinsey Global Institute (Oct. 2016), https://www.mckinsey.com/global-themes/urbanization/closing-californias-housing-gap.

[41] Liam Dillon, *We asked the candidates how they planned to meet housing production goals. Here's how they responded*, LA Times (March 6, 2018), http://www.latimes.com/politics/essential/la-pol-ca-essential-politics-updates-we-asked-the-candidates-how-they-planned-1520382029-htmlstory.html.

[42] Nathaniel Decker et al., Right Type Right Place: Assessing the Environmental and Economic Impacts of Infill Residential Development through 2030, U.C. Berkeley Terner Center for Housing Innovation and Center for Law, Energy and the Environment (Mar. 2017), https://ternercenter.berkeley.edu/right-type-right-place.

38. The UCB Study anticipates constructing only 1.9 million new homes, less than two-thirds of California's 3.5 million shortfall identified by other experts. The Study examines the continuation of existing housing production, which is dominated by single family homes with fewer than 1% of Californians living in high rise structures, and compares this with a changed housing pattern that would confine new housing to the boundaries of existing cities and towns and replace traditional single family homes with smaller apartments or condos (thereby equating 2,000 square foot homes with 800 square foot apartments).

39. The UCB Study concludes that high rise and even mid-rise (e.g., six story) buildings are far more costly to build on a per unit basis than single family homes—three to five time higher—and are thus infeasible in most markets for most Californians. The Study thus recommends focusing on less costly housing units such as quadplexes (four units in two-story buildings) and stacked flats (one or two units per floor, generally limited to four stories)—which are still approximately 30% more costly than single family homes on a per unit basis.

40. The UCB Study then concludes that it would be possible for California to build all 1.9 million new homes in existing communities with these small multi-family structures, but to confine all new units to the 4% of California that is already urbanized would require the demolition of "tens, if not hundreds of thousands, of single family homes." The Study does not quantify the GHG emissions from such massive demolition activities, nor does it identify any funding source or assess any non-GHG environmental, public service, infrastructure, historic structure, school, traffic, or other impact associated with this new housing vision.

41. Unlike CARB's 2017 Scoping Plan, the UCB Study does quantify the GHG reductions to be achieved by remaking California's existing communities and housing all Californians harmed by the current housing crisis in small apartments. With this new housing future, California will reduce annual GHG emissions by 1.79 million metric tons per year, less than 1% of the 181.8 million metric tons required to meet the 2030 Target in SB 32.

42. The Scoping Plan's new CEQA provisions, which have already been cited as CEQA legal mandates by opponents to a Los Angeles County housing project called

"Northlake,"[43] would increase still further the cost of new housing (and thereby make it even less affordable to California's minority and other families). Since new housing—especially infill housing—is already the top target of CEQA lawsuits statewide,[44] the GHG Housing Measures will encourage even more anti-housing lawsuits, with attendant increases in project litigation costs and construction delays, as well as vehement opposition from existing residents.

43. CEQA lawsuits also disproportionately target multi-family housing such as apartments in existing urbanized "infill" locations. In a recent 3-year study of all CEQA lawsuits filed statewide, the approximately 14,000 housing units challenged in the six county region comprising the Southern California Association of Governments ("SCAG"), which includes Los Angeles, Orange, San Bernadino, Ventura, Imperial, and Riverside counties and all cities within those counties, SCAG determined that 98% of the challenged housing units were located in existing urbanized areas, 70% were within areas designated for transit-oriented high density development, and 78% were located in the whiter, wealthier and healthier areas of the region (outside the portions of the regions with higher minority populations, poverty rates, pollution, and health problems associated with adverse environmental conditions such as asthma).[45]

44. CEQA lawsuit petitioners also have an unusually high success rate against the cities and other government agencies responsible for CEQA compliance. A metastudy of administrative agency challenges nationally showed that agencies win approximately 70% of such cases. In contrast, three different law firm studies of CEQA reported appellate court opinions showed that CEQA petitioners prevailed in almost 50% of such cases.[46]

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[43] Center for Biological Diversity, Letter to Los Angeles County (April 16, 2018), http://planning.lacounty.gov/assets/upl/case/tr073336_correspondence-20180418.pdf.

[44] Jennifer L. Hernandez, California Environmental Quality Act Lawsuits and California's Housing Crisis, 24 Hastings Envtl. L.J. (2018), https://www.hklaw.com/files/Uploads/Documents/Articles/121317_HELJ_Jennifer_Hernandez.pdf.

[45] Jennifer Hernandez, David Friedman, Stephanie DeHerrera, In the Name of the Environment Update: CEQA Litigation Update for SCAG Region (2013-2015) (Jul. 2016), p. 31-34, https://www.hklaw.com/files/UPloads/Documents/Alerts/Environment/InfillHousingCEQALawsuits.pdf.

[46] Jennifer Hernandez, Spencer Potter, Dan Golub, Joanna Meldrum, CEQA Judicial Outcomes: Fifteen Years of Reported California Appellate and Supreme Court Decisions (2015), p. 3-4, 10, https://www.hklaw.com/files/Uploads/Documents/Articles/0504FINALCEQA.pdf.

45. As noted by senior CEQA practitioner William Fulton, "CEQA provides a way for anybody who wants anything out of a public agency to get some leverage over the situation – whether that's unions, environmentalists, businesses, developers, and even local governments themselves."[47]

46. As the founder of California's first law firm focused on filing CEQA lawsuit petitions, E. Clement Shute, recently reported when accepting a lifetime environmental law firm award from the California State Bar Environmental Section:

> Moving to the bad and ugly side of CEQA, projects with merit that serve valid public purposes and not be harmful to the environment can be killed just by the passage of the time it takes to litigate a CEQA case.
>
> In the same vein, often just filing a CEQA lawsuit is the equivalent of an injunction because lenders will not provide funding where there is pending litigation. This is fundamentally unfair. There is no need to show a high probability of success to secure an injunction and no application of a bond requirement to offset damage to the developer should he or she prevail.
>
> CEQA has also been misused by people whose move is not environmental protection but using the law as leverage for other purposes. I have seen this happen where a party argues directly to argue lack of CEQA compliance or where a party funds an unrelated group to carry the fight. These, in my opinion, go to the bad or ugly side of CEQA's impact.[48]

47. African American radio host and MBA, Eric L. Frazier, called this climate-based CEQA housing regime "environmental apartheid" since whiter, wealthier and older homeowners were less likely to be affected, while aspiring minority homeowners were likely to be denied housing even longer based on community opposition to widespread density increases and destruction of single family homes, bear even higher housing costs given the absence of funding

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[47] William Fulton, Insight: Everyone wants to keep leverage under CEQA, California Planning & Development Report (Sept. 30, 2014), http://www.cp-dr.com/node/3585.

[48] E. Clement Shute, Jr., Reprise of Fireside Chat, Yosemite Environmental Law Conference, 25 Envtl Law News, 3 (2016).

sources to expand and replace undersized infrastructure and public services, and never be within reach of purchasing a family home.[49]

48. CARB's 2017 Scoping Plan, and its required CEQA analysis, also provide no assessment of alternatives for achieving the only 1% reduction in GHG emissions that the new housing future will accomplish from other sectors or sources, which could avoid adverse impacts to California's minority communities, avoid increased housing costs and CEQA litigation risks, and avoid impacting existing California communities by—for example—allowing urbanization of even 1% more of California's land.

49. CARB also ignores a history of success in reducing traditional pollutants from cars, as required by the federal and state Clean Air Acts, while preserving the transportation mobility of people and goods. U.S. Environmental Protection Agency ("EPA") reported in 2016 that most auto tailpipe pollutants had declined by 98-99% in comparison to 1960's cars, gasoline got cleaner with the elimination of lead and reduction in sulfur, and even though it had not been directly regulated, the primary GHG from cars (carbon dioxide) has risen nationally by less than 20% even as VMT nationally more than doubled as a co-benefit of mandatory reductions of traditional pollutants.[50]

50. In contrast to this success, CARB's VMT reduction scheme and its ongoing efforts to intentionally increase congestion are an assault on the transportation mobility of people, which disparately harm minority workers who have been forced by the housing crisis to drive ever greater distances to work.

51. CARB staff's response to The Two Hundred's December 2017 comment letter on the 2017 Scoping Plan is plain evidence of the intentional concealment and willful omission of the true impacts of the 2017 Scoping Plan and the GHG Housing Measures on California. CARB

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[49] Eric L. Frazier, The Power is Now, Facebook Live Broadcast (Feb. 28, 2018), https://thepowerisnow.com/events/event/jennifer-hernandez/.

[50] U.S. EPA, Historic Success of the Clean Air Act (2016), https://www.epa.gov/air-pollution-transportation/accomplishments-and-success-air-pollution-transportation.

staff said that GHG Housing Measures were in a separate chapter and thus not part of the 2017 Scoping Plan after all.[51]

52. California's climate change policies, and specifically those policies that increase the cost and delay or reduce the availability of housing, that increase the cost of transportation fuels and intentionally worsen highway congestion to lengthen commute times, and further increase electricity costs, have caused and will cause unconstitutional and unlawful disparate impacts to California's minority populations, which now comprise a plurality of the state's population. These impacts also disproportionately affect younger Californians including millennials (the majority of whom are minorities), as well as workers without college degrees.

53. In short, in the midst of California's unprecedented housing, homeless, poverty and transportation crisis, CARB adopted a 2017 Scoping Plan which imposes still higher housing, transportation and electricity costs on Californians. CARB did so without disclosing or assessing the economic consequences or the significant adverse environmental consequences of its GHG Housing Measures on California residents.

54. In doing so, CARB again affirmed its now-wanton and flagrant pattern of violating CEQA—a pattern consistent with what an appellate court termed "ARB's lack of good faith" in correcting earlier CEQA violations as ordered by the courts.

55. The GHG Housing Measures have a demonstrably disproportionate adverse impact on already-marginalized minority communities and individuals, including but not limited to Petitioners LETICIA RODRIGUEZ, TERESA MURILLO and EUGENIA PEREZ, who are Latina residents of Fresno County that are personally, directly and disproportionately adversely affected by the affordable housing shortage and the future exacerbation of that shortage if the GHG Housing Measures are allowed to remain in effect.

56. The Legislature has recognized the equal right to access to housing, *inter alia*, in the California Fair Employment and Housing Act (Gov. Code § 12900 *et seq.*) ("FEHA"). FEHA

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[51] Supplemental Responses to Comments on the Environmental Analysis Prepared for the Proposed Strategy for Achieving California's 2030 Greenhouse Gas Target (Dec. 14, 2017), p. 14-16, https://www.arb.ca.gov/cc/scopingplan/final-supplemental-rtc.pdf.

§ 12921(b) provides that: "The opportunity to seek, obtain, and hold housing without discrimination because of race, color, . . . source of income . . . or any other basis prohibited by Section 51 of the Civil Code is hereby recognized and declared to be a civil right."

57. California's housing crisis is particularly acute, and has long-lasting adverse impacts. As the Director of the California Department of Housing and Community Development, Ben Metcalf, recently reported: "Research has been unequivocal in supporting two undeniable conclusions: Low-income households paying more than half their income in rent have profoundly reduced expenditures on food, retirement, health care, and education compared with non–rent-burdened households. And children growing up in neighborhoods of concentrated poverty are more likely to have psychological distress and health problems."[52]

58. The 2017 Scoping Plan is also violative of the due process and equal protection clauses of the California and U.S. Constitutions (Cal. Const. Art. I, § 7, U.S. Const., Amd. 14, § 1). Accordingly, Petitioners in this action seek declaratory and injunctive relief from these violations pursuant to 42 U.S.C. § 1983. The GHG Housing Measures are thus unconstitutional on their face and as applied to Petitioners.

59. While the unlawful and unconstitutional disparate impact of the GHG Housing Measures on minority communities, including Petitioners, is the most egregious feature of the regulations, there are numerous other flaws, *each* of which is fatal to the 2017 Scoping Plan and the GHG Housing Measures. As detailed herein, these include violations of CEQA, the APA, the GWSA, the California Health and Safety Code, including the California Clean Air Act (H&S Code § 39607 *et seq.*) ("CCAA"), and the California Congestion Management Act (Gov. Code § 65088 *et seq.*). Moreover, CARB has acted in excess of its statutory authority (ultra vires).

60. The GHG Housing Measures are unlawful both procedurally (because they were adopted in violation of numerous statutory requirements, including but not limited to CEQA) and substantively (because they frustrate and violate a wide range of state and federal laws and regulations prohibiting housing regulations that have an unjustified discriminatory effect).

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[52] Donna Kimura, Pop Quiz with Ben Metcalf, Affordable Housing Finance (July 8, 2016), http://www.housingfinance.com/news/pop-quiz-with-ben-metcalf_o.

61. California's commitment to climate leadership does not require or allow CARB to violate the civil rights of California's minority communities, or constitutional and statutory mandates for clean air, fair housing, historic preservation, consumer protection, transportation mobility, CEQA, or administrative rulemaking.

62. With climate change repeatedly described as a "catastrophe" that could destroy civilizations, perhaps it is necessary for CARB to plunge more of California's minority residents into poverty and homelessness. If so—if climate change requires that the state ignore civil rights, federal and state clean air, fair housing, transportation and consumer protection mandates, and ignore the administrative law checks and balances that require a thorough environmental and economic assessment of regulatory proposals—then this is a conclusion that may only be implemented by the Legislature, to the extent it can do so consistent with the California and federal Constitutions.

63. For this reason, this action seeks declaratory and injunctive relief setting aside the four GHG Housing Measures, each of which places a disproportionate burden on California's minority community members, including Petitioners, and for the court to direct CARB to complete a thorough economic and environmental analysis prior to adopting any new regulations or taking other actions to implement the 2017 Scoping Plan, and to return to this court with a revised Scoping Plan that complies with state and federal law.

II. JURISDICTION AND VENUE

64. This Court has jurisdiction over this proceeding pursuant to California Code of Civil Procedure ("CCP") §§ 410.10, 1085, 1094.5, 526, *et seq.* and 1060. Defendants are subject to personal jurisdiction because their new GHG Housing Measures would, if allowed to remain in effect, pertain to Petitioners and others located within the County of Fresno. Defendants may be properly be served here, and jurisdiction and venue are proper here under CCP § 401, because Defendants are being sued in their official capacities as members of an agency of the State of California, and the Attorney General maintains an office in Fresno, California and the GHG regulations complained of herein have an effect in, and apply in, the County of Fresno, California.

III. PARTIES

65. Petitioners/Plaintiffs THE TWO HUNDRED are a California-based unincorporated association of community leaders, opinion makers and advocates working in California (including in Fresno County) and elsewhere on behalf of low income minorities who are, and have been, affected by California's housing crisis and increasing wealth gap.[53]

66. The Two Hundred is committed to increasing the supply of housing, to reducing the cost of housing to levels that are affordable to California's hard working families, and to restoring and enhancing home ownership by minorities so that minority communities can also benefit from the family stability, enhanced educational attainment over multiple generations, and improved family and individual health outcomes, that white homeowners have long taken for granted. The Two Hundred includes civil rights advocates who each have four or more decades of experience in protecting the civil rights of our communities against unlawful conduct by government agencies as well as businesses.

67. The Two Hundred supports the quality of the California environment, and the need to protect and improve public health in our communities.

68. The Two Hundred have for many decades watched with dismay decisions by government bureaucrats that discriminate against and disproportionately harm minority communities. The Two Hundred have battled against this discrimination for entire careers, which for some members means working to combat discrimination for more than 50 years. In litigation and political action, The Two Hundred have worked to force two government bureaucrats to reform policies and programs that included blatant racial discrimination—by for example denying minority veterans college and home loans and benefits that were available to white veterans, and promoting housing segregation as well as preferentially demolishing homes in minority communities.

69. The Two Hundred sued and lobbied and legislated to force federal and state agencies to end redlining practices that denied loans and insurance to aspiring minority home

[53] See www.the200leaders.org.

buyers and small businesses. The Two Hundred sued and lobbied to force regulators and private companies to recognize their own civil rights violations, and end discriminatory services and practices, in the banking, telecommunication, electricity, and insurance industries.

70. The Two Hundred have learned, the hard way, that California's purportedly liberal, progressive environmental regulators and environmental advocacy group lobbyists are as oblivious to the needs of minority communities, and are as supportive of ongoing racial discrimination in their policies and practices, as many of their banking, utility and insurance bureaucratic peers.

71. Several years ago, The Two Hundred waged a three year battle in Sacramento to successfully overcome state environmental agency and environmental advocacy group opposition to establishing clear rules for the cleanup of the polluted properties in communities of The Two Hundred, and experienced first-hand the harm caused to those communities by the relationships between regulators and environmentalists who financially benefited from cleanup delays and disputes instead of creating the clear, understandable, financeable, insurable, and equitable rules for the cleanup and redevelopment of the polluted properties that blighted these communities.

72. THE TWO HUNDRED's members include, but are not limited to, members of and advocates for minority communities in California, including the following:

- Joe Coto- Joe Coto is Chair of THE TWO HUNDRED. Mr. Coto is an American educator, city council member, and Democratic politician. From 2004-2010, he was a member of the California State Assembly, representing the 23rd Assembly District. He served as Chair of the Assembly's Insurance committee, and held positions on the Elections and Redistricting, Governmental Organization, and Revenue and Taxation committees. He also served on the Special committee on Urban Education. Coto served as Chair of the 26 member Latino Legislative Caucus for a 2-year term, and as Vice Chair for a 2-year term..
- John Gamboa – John Gamboa is Vice-Chair of THE TWO HUNDRED. Mr. Gamboa is the former Executive Director of the Greenlining Institute and has experience in academia, the private sector and the non-profit sector. Prior to the

Greenlining Institute, he was Executive Director of Latino Issues Forum, Communications Manager at U.C. Berkeley, Executive Director of Project Participar, a citizenship program, and Marketing and Advertising Manager at Pacific Bell. At the Greenlining Institute, Mr. Gamboa focuses on public policy issues that promote economic development in urban and low-income areas, and in developing future leaders within the country's minority youth. He has been active in combating redlining and in providing a voice for the poor and underserved in insurance, philanthropy, banking, housing, energy, higher education and telecommunications. He has served on numerous boards and commissions.

- Cruz Reynoso – Cruz Reynoso, now retired, formerly served as Legal Counsel for THE TWO HUNDRED. Mr. Reynoso has dedicated his life to public service championing civil rights, immigration and refugee policy, government reform, and legal services for the poor. Mr. Reynoso began his career in private practice then moved to public service as the assistant director of the California Fair Employment Practices Commission, the associate general counsel of the Equal Employment Opportunity Commission, and head of the California Rural Legal Assistance (CRLA). Mr. Reynoso was a faculty member at the University of New Mexico School of Law and in 1976, he was appointed associate justice of the California Courts of Appeal. In 1982, he became the first Latino to be appointed an associate justice of the California Supreme Court. Mr. Reynoso later returned to private practice, and resumed his teaching career by joining the UCLA School of Law and then the UC Davis School of Law. Mr. Reynoso has served as Vice Chair of the U.S. Commission on Civil Rights, was a member of the Select Commission on Immigration and Human Rights, and received the Presidential Medal of Freedom.
- José Antonio Ramirez – José Antonio Ramirez is a Council Member of THE TWO HUNDRED. He has dedicated his life to public service, especially for the residents

of the Central Valley, seeking to improve economic vitality, strengthen community life, and increase educational opportunities and housing affordability for all Californians, including disadvantaged members of the Latino community. He currently serves as President of Community Development Inc. and as City Manager for the City of Livingston. He was previously Program Manager, International Affairs Coordinator and Security Engineer and Emergency Management Coordinator for the U.S. Bureau of Reclamation. He served on the San Joaquin River Resource Management board, the Valley Water Alliance Board and as Chairman of the Technical Review Boards for Merced and Fresno County.

- Herman Gallegos – Herman Gallegos is a Council Member of THE TWO HUNDRED. He has provided active leadership in a wide variety of community, corporate and philanthropic affairs spanning local, national and international interests. As a pioneer civil rights activist in the early 1950s, Gallegos was a leader in the formation of the Community Service Organization, a civil rights-advocacy group organized to promote the empowerment and well-being of Latinos in California. In 1965, while serving as a Consultant to the Ford Foundation's National Affairs Program, Gallegos, with Dr. Julian Samora and Dr. Ernesto Galarza, made an assessment with recommendations on how the foundation might initiate support to address the critical needs of the rapidly growing Latino population in the U.S.. As a result, he was asked to organize a new conduit for such funds—the Southwest Council of La Raza, now the National Council of La Raza. Gallegos went on to become the council's founding executive director. Gallegos also served as CEO of several business firms, including the U. S. Human Resources Corporation and Gallegos Institutional Investors Corporation. He became one of the first Latinos elected to the boards of publicly traded corporations and the boards of preeminent private and publicly supported philanthropic organizations, such as the Rockefeller Foundation, The San Francisco Foundation, The Poverello Fund and the California Endowment.

- Hyepin Im – Hyepin Im is a Council Member of THE TWO HUNDRED. She currently serves as the Founder and President of Korean Churches for Community Development (KCCD) whose mission is to help churches build capacity to do economic development work. Under Ms. Im's leadership, KCCD has implemented a historic homeownership fair in the Korean community, a Home Buyer Center Initiative with Freddie Mac, a national database and research study on Korean American churches, and ongoing training programs. Previously, Ms. Im was a venture capitalist for Renaissance Capital Partners, Sponsorship and Community Gifts Manager for California Science Center, a Vice President with GTA Consulting Company, and a Consultant and Auditor with Ernst & Young LLP. Ms. Im serves on the Steering Committee of Churches United for Economic Development, as Chair for the Asian Faith Commission for Assemblymember Herb Wesson, and has served as the President of the Korean American Coalition, is a member of the Pacific Council, was selected to be a German Marshall Fund American Memorial Marshall Fellow, and most recently, was selected to take part in the Harvard Divinity School Summer Leadership Institute.
- Don Perata – Don Perata is a Council Member of THE TWO HUNDRED. Mr. Perata began his career in public service as a schoolteacher. He went on to serve on the Alameda County Board of Supervisors (1986-1994) and the California State Assembly (1996-1998). In 1998, he was elected to the California State Senate and served as president pro tem of the Senate from 2004-2008. As president pro tem, Mr. Perata oversaw the passage of AB 32, California's cap and trade regulatory scheme to reduce greenhouse gases. Mr. Perata has guided major legislation in health care, in-home services, water development and conservation and cancer, biomedical and renewable energy. Mr. Perata has broad experience in water, infrastructure, energy, and environmental policies, both as an elected official and a consultant. He is versed in the State Water Project, Bay Delta restoration,

renewable energy, imported water and water transfers, recycling, conservation, groundwater regulation, local initiative, storage and desalination.

- Steven Figueroa – Steven Figueroa is a Council Member of THE TWO HUNDRED. He was born in East L. A., with a long history in California. Working on his first political campaign at age nine he learned that if you want change you have to be involved. As an adult he was involved in the labor movement through the California School Employees Association and later as a union shop steward at the U.S.P.S. A father of three, Steven has been advocating for children with disabilities for 30 years, beginning in 1985, for his own son, who is autistic. He took the Hesperia School District to court for violating his disabled son's rights and prevailed. He advocates for disabled children throughout the United States, focusing on California. Currently, he serves as president of the Inland Empire Latino Coalition and sits on the advisory boards of California Hispanic Chambers of Commerce, the National Latina Business Women Association Inland Empire the Disability Rights and Legal Center Inland Empire, and as Executive Director for Latin PBS. He previously served as the vice president of the Mexican American Political Association Voter Registration & Education Corp.
- Sunne Wright McPeak – Sunne McPeak is a Council Member of THE TWO HUNDRED. She is the President and CEO of the California Emerging Technology Fund, a statewide non-profit whose mission is to close the Digital Divide by accelerating the deployment and adoption of broadband. She previously served for three years as Secretary of the California Business, Transportation and Housing Agency where she oversaw the largest state Agency and was responsible for more than 42,000 employees and a budget in excess of $11 billion. Prior to that she served for seven years as President and CEO of the Bay Area Council, as the President and CEO of the Bay Area Economic Forum, and for fifteen years as a member of the Contra Costa County Board of Supervisors. She has led numerous statewide initiatives on a variety of issues ranging from water, to housing, to child

care, and served as President of the California State Association of Counties in 1984. She was named by the San Francisco League of Women Voters as "A Woman Who Could Be President." She also served on the Boards of Directors of First Nationwide Bank and Simpson Manufacturing Company.

- George Dean – George Dean is a Council Member of THE TWO HUNDRED. Mr. Dean has been President and Chief Executive Officer of the Greater Phoenix Urban League since 1992. As such, he has brought a troubled affiliate back to community visibility, responsiveness and sound fiscal accountability. Mr. Dean, a former CEO of the Sacramento, California and Omaha, Nebraska affiliates boasts more than 25 years as an Urban League staff member. His leadership focuses on advocacy toward issues affecting the African-American and minority community, education, training, job placement and economic development. Mr. Dean annually raises more than 3 million dollars from major corporations, local municipalities and state agencies for the advancement of minority enterprises, individuals, families and non-profits. Mr. Dean is nationally recognized in the field of minority issues and advancement, and affordable housing.
- Joey Quinto – Joey Quinto is a Council Member of THE TWO HUNDRED. Mr. Quinto's has made many contributions to the advancement of the API community. He began his professional career as a mortgage banker. As a publisher, his weekly newspaper advances the interests of the API community and addresses local, consumer and business news, and community events. He is a member of several organizations including the Los Angeles Minority Business Opportunity Committee and The Greenlining Coalition. Mr. Quinto is the recipient of the Award for Excellence in Journalism during the Fourth Annual Asian Pacific Islander Heritage Awards in celebration of the Asian Pacific Islander American Heritage Month. He was also listed among the Star Suppliers of the Year of the Southern California Regional Purchasing Council, received the Minority Media

Award from the U.S. Small Business Administration, and earned a leadership award from the Filipino American Chamber of Commerce based in Los Angeles.

- Bruce Quan, Jr. – Bruce Quan is a Council Member of THE TWO HUNDRED. Mr. Quan is a fifth generation Californian whose great grandfather, Lew Hing founded the Pacific Coast Canning Company in West Oakland in 1905, then one of the largest employers in Oakland. Bruce attended Oakland schools, UC Berkeley, and Boalt Hall School of Law. At Berkeley, he was a community activist for social justice, participated in the Free Speech Movement and the Vietnam Day Committee and was elected student body president. In 1973, he was chosen as one of three students to clerk for the Senate Watergate Committee and later returned to Washington to draft the "Cover-up" and "Break-in" sections of the committee's final report. He worked in the Alameda's City Attorney office, his own law practice advising Oakland's Mayor Lionel Wilson on economic development issues in Chinatown and serving Mayor Art Agnos as General Counsel for the San Francisco-Shanghai Sister City Committee and the San Francisco-Taipei Sister City Committee. In 2000, he moved to Beijing, continued his law practice, worked as a professor with Peking Law School, and became senior of counsel with Allbright Law Offices. Now in Oakland, he has reengaged in issues affecting the Chinese community and on issues of social justice, public safety and economic development in Oakland.
- Robert J. Apodaca – Robert Apodaca is a Council Member of THE TWO HUNDRED. He is a Founder of ZeZeN Advisors, Inc., a boutique financial services firm that connects institutional capital with developers and real estate owners. He has a 45-year career that spans private and public sectors. He was Chairman and Trustee of Alameda County Retirement Board (pension fund) and then joined Kennedy Associates, an institutional investor for pension funds as Senior Vice President & Partner. He represented Kennedy Companies on Barings Private Equity's "Mexico Fund" board of directors. He later joined McLarand

Vasquez Emsiek & Partners, a leading international architectural and planning firm, as Senior Vice President of Business Development. He currently serves on numerous board of directors including Jobs and Housing Coalition, Greenlining Institute, California Community Builders and California Infill Federation.

- Ortensia Lopez – Ortensia Lopez is a Council Member of THE TWO HUNDRED. She is a nationally recognized leader in creating coalitions, collaboratives and partnerships, resulting in innovative initiatives that ensure participation for low-income communities. Ms. Lopez has worked in the non-profit sector for over forty-one years in executive management positions. She is the second of 11 children born to parents from Mexico and the first to graduate from college. She currently serves on the California Public Utilities Commission's Low-Income Oversight Board, as Co-Chairperson and founding member of the Greenlining Institute, as Vice-President Chicana/Latina Foundation, as Director of Comerica Advisory Board, and on PG&E's Community Renewables Program Advisory Group. Ms. Lopez has earned numerous awards, including Hispanic Magazine's "Hispanic Achievement Award", San Francisco's "ADELITA Award", the prestigious "Simon Bolivar Leadership Award", the League of Women Voters of San Francisco "Woman Who Could Be President" award, California Latino Civil Rights Network award, and the Greenlining Lifetime Achievement.
- Frank Williams – Frank Williams is a Council Member of THE TWO HUNDRED. He is an established leader in the mortgage banking industry, with over 25 years of experience, and is an unwavering advocate for creating wealth through homeownership for underrepresented communities. Frank began his real estate finance career in 1990, emphasizing Wholesale Mortgage Banking. He founded Capital Direct Funding, Inc. in 2009. Today, as Co-founder and Divisional Manager, Mr. Williams has made Capital Direct Funding into California's premier private lending firm. Capital Direct Funding's foundations are built on giving back to the community by supporting several non-profits. He

currently serves as President of East LA Classic Theater, a non-profit that works with underserved school districts in California. Frank was also Past President for Los Angeles' National Association of Hispanic Real Estate Professionals.

- Leticia Rodriguez - Leticia Rodriguez is a resident of Fresno County, California. She is a low-income single mother and Latina who suffers ongoing personal harm from the severe shortage of housing that is affordable to working-class families. Within the last three years, she has spent more than 30% of her income on rent. She has been forced to move into her parents' home because she cannot afford a decent apartment for herself and her family.
- Teresa Murillo – Teresa Murillo is a resident of the City of Parlier in Fresno County, California. She is a young Latina with a low income. In recent years, she has spent approximately 30% of her income on housing. She currently is unable to afford a decent apartment and has been forced to move back in with her parents.
- Eugenia Perez – Eugenia Perez is a resident of Fresno County, California. She is a Latina grandmother. The majority of her income goes to pay rent. She currently is renting a room on E. Fremont Avenue in Fresno. She struggles to pay rent and lives in fear of becoming homeless if housing prices and rent continue to increase.

73. Defendant CALIFORNIA AIR RESOURCES BOARD is an agency of the State of California. On information and belief, current members of the CALIFORNIA AIR RESOURCES BOARD are: Mary D. Nichols, Sandra Berg, John R. Balmes, Hector De La Torre, John Eisenhut, Dean Flores, Eduardo Garcia, John Gioia, Ricardo Lara, Judy Mitchell, Barbara Riordan, Ron Roberts, Phil Serna, Alexander Sherriffs, Daniel Sperling, and Diane Takvorian.

74. Defendant RICHARD COREY, sued herein in his official capacity, is Executive Officer of the CALIFORNIA AIR RESOURCES BOARD.

75. Petitioners are ignorant of the true names or capacities of the defendants sued herein under the fictitious names DOES 1 through 20 inclusive. When their true names and capacities are ascertained, Petitioners will amend this Petition/Complaint to show such true names and capacities. Petitioners are informed and believe, and thereon allege, that DOES 1 through 20,

inclusive, and each of them, are agents or employees of one or more of the named Defendants responsible, in one way or another, for the promulgation and prospective enforcement of the GHG Housing Measures sought to be invalidated and set aside herein.

IV. GENERAL ALLEGATIONS

A. California's Statutory Scheme To Reduce Greenhouse Gas Emissions and Avoid Disparate Impacts

76. As part of developing solutions to global warming, the California Legislature adopted the California Global Warming Solutions Act of 2006 (otherwise known as "AB 32" or the "GWSA") and established the first comprehensive greenhouse gas regulatory program in the United States. H&S Code § 38500 *et seq.*

77. Under AB 32, CARB is the state agency charged with regulating and reducing the sources of emissions of GHGs that cause global warming. H&S Code § 38510.

78. AB 32 required CARB to set a statewide GHG emissions limit equivalent to California's 1990 GHG emissions to be achieved by 2020. H&S Code § 38550.

79. AB 32 also required CARB to prepare, approve, and periodically update a scoping plan detailing how it would achieve the maximum technologically feasible and cost-effective GHG emissions reductions by 2020. H&S Code § 38561(a). The scoping plan is required to identify and make recommendations on direct emissions reductions measures, alternative compliance mechanisms, market-based compliance mechanisms, and potential monetary and nonmonetary incentives for sources to achieve reductions of GHGs by 2020. H&S Code § 38561(b). The scoping plan must be updated at least every five years. H&S Code § 38561(h).

80. In adopting a scoping plan, CARB must evaluate the total potential costs and total potential benefits of the plan to California's economy, environment, and public health. H&S Code § 38561(d).

81. Each scoping plan update also must identify, for each emissions reduction measure, the range of projected GHG emissions reductions that result from the measure, the range of projected air pollution reductions that result from the measure, and the cost-effectiveness, including avoided social costs, of the measure. H&S Code § 38562.7.

82. The initial scoping plan[54] was discussed in public hearings on or about December 11, 2008. The initial scoping plan was adopted by CARB on or about May 7, 2009.

83. On or about December 23, 2009, the initial scoping plan was challenged in the Superior Court for the City and County of San Francisco for failing to meet the statutory requirements of AB 32, the APA, and CEQA. The superior court accepted the challenge in part and the appeal was thereafter resolved after a further environmental document was filed.[55]

84. The Low Carbon Fuel Standard ("LCFS") was an early action item under AB 32. The LCFS was adopted on or about November 25, 2009 by CARB's executive officer. CARB's action to adopt the LCFS also was challenged for CEQA and APA violations. On or about November 2011, the Superior Court of Fresno County found that CARB had not violated the APA or CEQA. On or about July 15, 2013 the Fifth District Court of Appeal reversed the superior court's judgment and ordered it to issue a preemptory writ of mandate ordering CARB to revise and recertify its environmental assessment to meet CEQA's standards.[56]

85. The first update to the scoping plan[57] was adopted on or about May 22, 2014.

86. Thereafter, on or about May 30, 2017, the Fifth District Court of Appeal again found that CARB had violated CEQA and the APA, and that it had not acted in good faith in responding to certain of the Court's prior orders.[58] Specifically, the court found that CARB violated CEQA in deferring its analysis and mitigation of potential increases in nitrogen oxide emissions resulting from impacts of the LCFS regulations.

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[54] California Air Resources Board, Climate Change Scoping Plan (Dec. 2008), https://www.arb.ca.gov/cc/scopingplan/document/adopted_scoping_plan.pdf.

[55] *Ass'n. of Irritated Residents v. Cal. Air Res. Bd.*, 2011 WL 8897315 (Cal. Super. May 20, 2011) (approving challenges to alternatives analysis and improper "pre-approval" under CEQA) and *Ass'n. of Irritated Residents v. Cal. Air Res. Bd.* (2012) 206 Cal.App.4th 1487.

[56] *POET, LLC v. California Air Resources Board* (2013) 217 Cal.App.4th 1214 (holding that CARB prematurely approved the LCFS and improperly deferred analysis and mitigation of potential NOx emissions increased by the rule).

[57] California Air Resources Board, First Update to the Climate Change Scoping Plan (May 2014), https://www.arb.ca.gov/cc/scopingplan/2013_update/first_update_climate_change_scoping_plan.pdf.

[58] *POET, LLC v. State Air Resources Board* (2017) 12 Cal.App. 5th 52.

87. In 2016, the California Legislature adopted SB 32, which required CARB to ensure that rules and regulations adopted pursuant to the GWSA would target California's GHG emissions for reductions of 40% below 1990 levels by 2030. H&S Code § 38566.

88. AB 32 requires CARB to update the scoping plan at least every five years. CARB superseded its 2014 Scoping Plan with the current 2017 Scoping Plan adopted on December 14, 2017. The 2017 Scoping Plan contains the new GHG Housing Measures complained of herein.[59]

89. Between December, 2017 and mid-April, 2018, Petitioners, through counsel, sought to persuade CARB to eliminate or materially modify the four new GHG Housing Measures complained of herein, without success. During this time, the parties entered into a series of written tolling agreements that were continuously operative until April 30, 2018.

B. The 2017 Scoping Plan

90. Throughout 2016 and 2017, CARB prepared the 2017 Scoping Plan. CARB held meetings on or about January 27, 2017, February 16-17, 2017 and December 14, 2017 to accept public comment on the proposed 2017 Scoping Plan.

91. Because the Scoping Plan is both sweeping and vague, and because it was not preceded by a notice of proposed rulemaking, Petitioners THE TWO HUNDRED, *et al.* did not initially appreciate the significance of the new GHG regulations and standards embedded in the 2017 Scoping Plan by CARB staff.

92. Petitioners submitted a detailed letter commenting on the 2017 Scoping Plan on December 11, 2017, in advance of CARB's meeting to vote on the 2017 Scoping Plan.[60] The letter included extensive citations to documents and publications analyzing California's ongoing housing crisis and the disproportionate impact of the worsening housing shortage on marginalized minority communities.

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[59] California Air Resources Board, The 2017 Climate Change Scoping Plan Update (Jan. 20, 2017), https://www.arb.ca.gov/cc/scopingplan/2030sp_pp_final.pdf.

[60] The Two Hundred Comment Letter dated Dec. 11, 2017, can be found in the Supplemental Responses to Comments on the Environmental Analysis Prepared for the Proposed Strategy for Achieving California's 2030 Greenhouse Gas Target (Dec. 14, 2017), p. 74, https://www.arb.ca.gov/cc/scopingplan/final-supplemental-rtc.pdf

93. On December 14, 2017, CARB adopted the 2017 Scoping Plan.

94. While the 2017 Scoping Plan is replete with protestations to the effect that it is only providing "guidance" rather than a "directive or mandate to local governments" (see, e.g., Scoping Plan, p. 99), it is plain that CARB's pronouncements on the GHG Housing Measures, by their nature, will be given the force and effect of law. Numerous courts have stated that when an agency has specific expertise in an area and/or acts as lead or responsible agency under CEQA, and publishes guidance, that guidance must be taken into consideration and will be given heavy weight.

95. In *California Building Industry Assn. v. Bay Area Air Quality Mgmt. Dist.* (2016) 2 Cal.App.5th 1067, 1088, the court rejected the notion that the District's CEQA guidelines were a nonbinding, advisory document. The court stated that the guidelines suggested a routine analysis of air quality in CEQA review and were promulgated by an air district that acts as either lead or responsible agency on projects within its jurisdictional boundaries.

96. In addition, in *Center for Biological Diversity v. Cal. Dept. of Fish and Wildlife* (2015) 62 Cal.4th 204, 229, the court recognized the value of "performance based standards" as CEQA thresholds, as outlined in the Scoping Plan or other authoritative body of regulations.

97. Further, in *Cleveland Nat. Forest Foundation, et al v. San Diego Assoc. of Governments* (2017) 3 Cal.5th 497, 515, the court held that even though the 2050 Executive Order was not an adopted GHG reduction plan and there was no legal requirement to use it as a threshold of significance, that was not dispositive of the issue. Although lead agencies have discretion in designing an Environmental Impact Report ("EIR") under CEQA, the court stated that the exercise of that discretion must be "based to the extent possible on scientific and factual data" and thus the scientific basis for the Executive Order's and CARB's emission reduction goals must be considered in a CEQA analysis.

98. Thus, because CEQA documents must take a long term view of GHG compliance and because of the deference and weight other agencies are required to give to CARB guidance, the measures alleged to be "guidance" are in reality self-implementing regulations having an immediate "as applied" effect.

99. The LAO also has recognized that CARB's Scoping Plans include "a wide variety of regulations intended to help the state meet its GHG goal…"[61]

C. CARB's Improper "Cumulative Gap" Reduction Requirement

100. In AB 32, the Legislature directed CARB to reduce statewide GHG emissions to 1990 levels by 2020 via measures in the first Scoping Plan. This legislative mandate is simple and uncontested. CARB concluded that California's GHG emissions were 431 million metric tons of carbon dioxide equivalent ("$MMTCO_2e$") in 1990.

101. SB 32 established the more stringent mandate of reducing GHG emissions to 40% below 1990 levels by 2030, even though California's population and economic activities are expected to continue to increase during this period. The 2030 Target is simple math: 40% below 431 $MMTCO_2e$ equals 258.6 $MMTCO_2e$.[62] Thus, the 2017 Scoping Plan created measures to reduce statewide emissions to 260 MMTCO2e by 2030.

102. The 2017 Scoping Plan first evaluates the "Reference Scenario", which is the emissions expected in 2030 by continuing "Business as Usual" and considering existing legal mandates to reduce GHG emissions that have been implemented, but without adopting any new GHG reduction measures. The Scoping Plan concludes that in this scenario California's GHG .emissions will fall to 389 MMTCO2e by 2030.

103. Because numerous GHG reduction mandates are being phased in over time, CARB also evaluated a "Known Commitments Scenario" (which CARB confusingly named the "Scoping Plan Scenario") which estimates GHG emissions in 2030 based on compliance with all legally required GHG reduction measures, including those that have not yet been fully implemented. Under the "Known Commitments Scenario" the 2017 Scoping Plan concludes that California's GHG emissions will fall to 320 MMTCO2e by 2030.

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[61] LAO, Cap-and-Trade Revenues: Strategies to Promote Legislative Priorities (Jan. 21, 2016), http://www.lao.ca.gov/reports/2016/3328/cap-trade-revenues-012116.pdf, at p. 5-6.

[62] CARB generally rounds this to 260 MMTCO2e.

104. Given that SB 32 required a reduction to 260 MMTCO2e, this left a gap of 60 MMTCO2e for which CARB was required to identify measures in the 2017 Scoping Plan in the "Known Commitments Scenario" and 129 MMTCO2e in the "Reference Scenario".

105. CARB declined to comply with this legislated mandate, and instead invented a different "cumulative gap" reduction requirement which requires far more GHG emission reductions.

106. Neither the Scoping Plan nor any of its appendices explain how this "cumulative gap" reduction requirement was derived, and the methodology and assumptions CARB used can only be located in one of several modeling spreadsheets generally referenced in the plan.

107. CARB's unlegislated "cumulative gap" requirement is based on the unsupportable assumption that state emissions must decline in a fixed trajectory from 431 $MMTCO_2e$ in 2020 to 258.6 MMTCO2e in 2030 despite the fact that SB 32 does not require that the state reach the 2030 Target in any specific way. CARB arbitrarily created the "cumulative gap" requirement by summing the annual emissions that would occur from 2021-2030 if emissions declined in a straight line trajectory, which totaled 3,362 MMTCO2e, as follows:

	Annual emissions based on a straight line trajectory from 2020 to 2030 ($MMTCO_2e$)
2020	431.0
2021	413.8
2022	396.5
2023	379.3
2024	362.0
2025	344.8
2026	327.6
2027	310.3
2028	293.1
2029	275.8
2030	258.6
2021-2030 Cumulative Emissions	3,362

108. CARB then summed the annual emissions projected to occur from 2021-2030 under the "Reference Scenario" without the implementation of the measures included in the "Known Commitments Scenario," as 3,982 MMTCO2e.

109. CARB then subtracted the cumulative "Reference Scenario" emissions (3,982 $MMTCO_2e$) from the cumulative emissions based on the straight line trajectory (3,362 $MMTCO_2e$) and illegally used the difference, 621 $MMTCO_2e$, as a new, unlegislated GHG "cumulative gap" reduction requirement.

Year	"Reference Scenario" Annual Emissions ($MMTCO_2e$)
2020	415.8
2021	411.0
2022	405.5
2023	400.3
2024	397.6
2025	398.7
2026	396.8
2027	395.5
2028	394.4
2029	393.9
2030	388.9
2021-2030 Cumulative Emissions	3,982
Difference from Straight Line Cumulative Emissions Total	621

110. Scoping Plan Figure 7, for example, is titled "Scoping Plan Scenario – Estimated Cumulative GHG Reductions by Measure (2021–2030)." The identified measures show the amount of reductions required to "close" the 621 $MMTCO_2e$ GHG "cumulative gap" CARB invented from the difference in cumulative emissions from 2021-2030 between a hypothetical straight line trajectory to the 2030 Target and the "Reference Scenario" projections.

111. Figure 8 of the Scoping Plan and associated text provide an "uncertainty analysis to examine the range of outcomes that could occur under the Scoping Plan policies and measures" which is entirely based on the 621 $MMTCO_2e$ GHG "cumulative gap" metric.[63]

112. CARB also calculated that the cumulative annual emissions projected to occur under the "Known Commitments Scenario" from 2021-2030 would be 3,586 MMTCO2e and subtracted this amount from the cumulative emissions generated by the straight line trajectory (3,362 $MMTCO_2e$). The difference is 224 $MMTCO_2e$, which is incorrectly shown as 236 $MMTCO_2e$ in Table 3 of the Scoping Plan and in the text following Table 3. CARB illegally characterized the 224 $MMTCO_2$ difference as the "cumulative emissions reduction gap" in the "Known Commitments Scenario" in the Scoping Plan and evaluated the need for additional measures on the basis of "closing" this unlegislated and unlawful "cumulative gap".

Year	"Known Commitments Scenario" Annual Emissions ($MMTCO_2e$)
2020	405.5
2021	396.8
2022	387.1
2023	377.6
2024	367.4
2025	362.7
2026	354.4
2027	347.1
2028	340.4
2029	331.8
2030	320.4
2021-2030 Cumulative Annual Emissions	3,586
Difference from Straight Line Cumulative Emissions Total	224

[63] The analysis discussion references Scoping Plan Appendix E for more details.

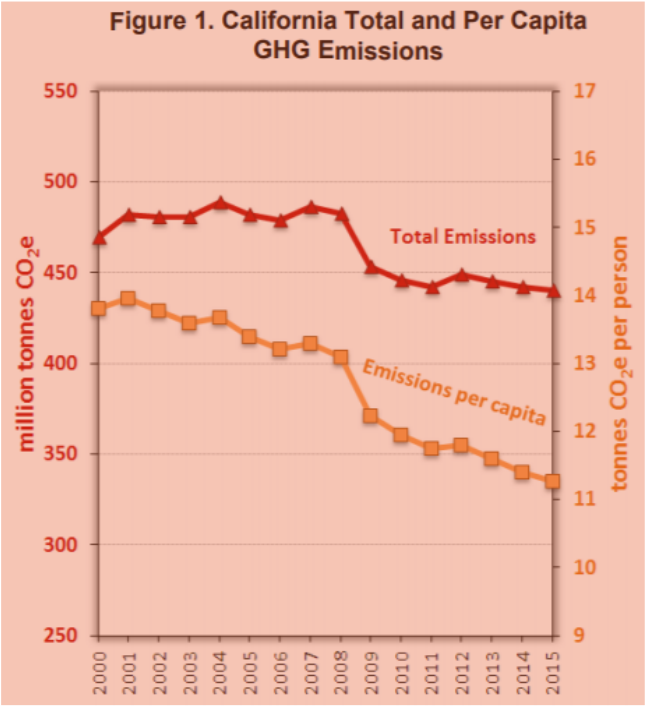
113. The California legislature in no way authorized CARB to invent a "cumulative gap" methodology based on an unreasonable and arbitrary straight line trajectory from 2020 to the 2030 Target, which counted each year's shortfall against the 2030 Target and then added all such shortfalls to inflate reduction needed from the 129 and 60 $MMTCO_2e$ (depending on scenario) required by the 2030 Target to the 621 and 224 $MMTCO_2e$ "cumulative gap" requirements.

114. SB 32 does not regulate cumulative emissions and only requires that the 2030 Target of 260 MMTCO2e be achieved by 2030. CARB's own analysis shows that existing legal requirements will reduce emissions to 320 $MMTCO_2e$ in 2030. At most, CARB was authorized to identify measures in the Scoping Plan that would further reduce emissions by 60 $MMTCO_2e$ in 2030 under the "Known Commitments Scenario". CARB instead illegally created new, and much larger "cumulative gap" reduction requirements of 224 $MMTCO_2e$ and 621 $MMTCO_2e$.

115. CARB arbitrarily determined that the straight line trajectory to the 2030 Target was the only way to reach the mandate of 260 MMTCO2e by 2030 when there are numerous potential paths that California's GHG emission reductions could take between 2021 and 2030.

116. For example, as shown in Figure 1 below, in reaching the 2020 Target, California's GHG emissions reductions have not followed a straight line trajectory, but have gone up and down based on the economy and other factors.[64]

[64] Figure 1 is from the California Air Resources Board's 2017 Edition of California's GHG Emission Inventory (June 6, 2017), p. 2, https://www.arb.ca.gov/cc/inventory/pubs/reports/2000_2015/ghg_inventory_trends_00-15.pdf.



117. CARB's arbitrary and capricious requirement that reductions must meet a cumulative GHG reduction total, rather than take any path feasible that gets the state to the 2030 Target is unlawful.

118. Both AB 32 (and earlier Scoping Plans) and SB 32 contemplated a "step down" of GHG emissions to the quantity established for the target year, with the "step down" increments occurring as new technologies, regulations, and other measures took effect. This step down approach has been part of air pollution control law for decades.

119. Under the federal Clean Air Act ("CAA"), the EPA sets National Ambient Air Quality Standards ("NAAQS") that set air quality levels in certain years for specific pollutants (*e.g.*, the 2015 NAAQS for ozone is 70 ppb and it must be achieved as expeditiously as possible). States then create and adopt State Implementation Plans ("SIPs") which include control measures to indicate how the state will meet the NAAQS standard. The reductions that the SIPs must achieve via their control measures to reach the NAAQS are always interpreted as being applicable to the target year, *i.e.*, how much reduction will need to occur in one year to reduce emissions from business as usual to the NAAQS level? The SIPs do not plan for emission reduction measures that must reduce emissions cumulatively over time (from the time of adoption of the

2015 ozone NAAQS until the year it is reached), such that not meeting the NAAQS in earlier years means that those excess emissions must be added to future years to create the required emissions reductions to balloon over time as the NAAQS goes unmet.

120. In addition, criteria air pollutants regulated by EPA, CARB, and California's local air districts are always regulated under a cost/ton disclosure metric in which the expected cost to reduce emissions must be not only explained in rulemaking documents, but taken into consideration in deciding whether to adopt any rule controlling emissions. This system has worked to reduce tailpipe emissions of criteria pollutants from passenger cars by 99% over time.

121. Given this clear and consistent pattern of EPA and CARB interpretation of the legal status of air quality levels to be achieved by a certain time, it was arbitrary and capricious for CARB to create this "deficit accounting" metric in the cumulative gap analysis rather than merely creating measures which would meet the 2030 Target by 2030.

122. CARB also used the unlawful "cumulative gap" reduction metric to identify the nature and extent of Scoping Plan reduction measures, including the GHG Housing Measures, address uncertainties in achieving these reductions, and to complete the legally mandated FA and EA for the 2017 Scoping Plan.

123. CARB's unilateral creation and use of the "cumulative gap" reduction requirement instead of the statutory SB 32 2030 Target is unlawful, and imposes new cost burdens, including on housing, that will further exacerbate the housing-induced poverty crisis.

D. The Four New, Unlawful GHG Housing Measures the 2017 Scoping Plan Authorizes

1. Unlawful VMT Reduction Requirement

124. Among the new regulations and standards added to CARB's 2017 Scoping Plan—which were not in any of its earlier scoping plans—is a requirement to reduce VMT. This requirement is part of the Scoping Plan Scenario presented in Chapter 2 in the "Mobile Source Strategy."[65]

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[65] See Scoping Plan, p. 25 Table 1: Scoping Plan Scenario (listing Mobile Source Strategy (Cleaner Technology and Fuels [CTF] Scenario)).

125. The "Mobile Source Strategy" includes a requirement to reduce VMT. This allegedly would be achieved by continued implementation of SB 375, regional Sustainable Communities Strategies, statewide implementation of SB 743, and potential additional VMT reduction strategies included in Appendix C ("Potential VMT Reduction Strategies for Discussion"). Scoping Plan, p. 25.

126. The 2017 Scoping Plan states that "VMT reductions will be needed to achieve the 2030 target" and to meet the 2050 GHG emission reduction goal set in Executive Order S-3-05. Scoping Plan, p. 75.

127. CARB states that VMT reductions of 7 percent below projected VMT are necessary by 2030 and 15 percent below projected VMT by 2050. Scoping Plan, p. 101.

128. The "Mobile Source Strategy" measure requires a 15 percent reduction in total light-duty VMT from the business as usual scenario by 2050. Scoping Plan, p. 78. It also requires CARB to work with regions to update SB 375 targets to reduce VMT to reach the 2050 goal and to implement VMT as the CEQA metric for assessing transportation impacts. *Id.*

129. The "Mobile Source Strategy" as a whole is estimated to result in cumulative GHG emission reductions of 64 $MMTCO_2e$ per year. Scoping Plan, p. 28.

130. These VMT reduction requirements are included in the 2017 Scoping Plan without appropriate recognition of the counterproductive effects of such a fixation on reducing VMT in the context of affordable housing proximate to job centers.

131. The 2017 Scoping Plan notes that promoting stronger boundaries to suburban growth, such as urban growth boundaries, will reduce VMT. Scoping Plan, p. 78. This also raises housing prices within the urban growth boundary and pushes low-income Californians, including minorities, to unacceptable housing locations with long drive times to job centers.

132. Other VMT reduction measures in the 2017 Scoping Plan, such as road user and/or VMT-based pricing mechanisms, congestion pricing, and parking pricing, further disadvantage low-income and minority residents who must drive farther through more congested roads.

133. The VMT reductions called for in Chapters 2 and 5 of the Scoping Plan make no distinction for miles driven by electric vehicles with zero GHG emissions or for miles driven by

hybrid vehicles when using only electric power. Instead, they would advance a suite of new burdens, including charging individual drivers for each vehicle mile travelled, and intentionally increasing overall roadway congestion to induce more workers to use public transit.

134. CARB's new VMT requirements, which purport to encourage public transit, essentially ignore the fact that far fewer than 10% of Californians can get from their home to their jobs in less than one hour on public transit, and that public transit ridership has fallen nationally and in California.[66] CARB's new VMT requirements fail to rationally address the reality that VMT continues to increase rather than decrease in California due to increasing population and employment levels.[67]

135. CARB's answer to reducing VMT by increasing bicycling, walking, and transit use is a laughable solution for low-income Californians, such as those living in the San Joaquin Valley and commuting to jobs in the San Francisco Bay Area.[68]

136. The burden of CARB's VMT reduction measures falls disproportionately on minority workers already forced by the housing crisis to endure long and even "mega" commutes lasting more than three hours per day.[69] The vast majority of middle and lower-income jobs (disproportionately performed by minority workers) require those workers to be physically present at their job sites to be paid. Affected job categories include teachers, nurses, emergency

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[66] Laura J. Nelson, *L.A. Bus Ridership Continues to Fall: Officials Now Looking to Overhaul the System*, L.A. Times (May 23, 2017) http://www.latimes.com/local/lanow/la-me-ln-bus-ridership-study-20170518-story.html; Center for Transportation Studies, Access Across America, University of Minnesota (2017) http://www.cts.umn.edu/research/featured/access.

[67] California Air Resources Board, Updated Final Staff Report, Proposed Update to the SB 375 Greenhouse Gas Emission Reduction Targets, Feb. 2018, https://www.arb.ca.gov/cc/sb375/sb375_target_update_final_staff_report_feb2018.pdf, p. 19.

[68] Conor Dougherty, Andrew Burton, *A 2:15 Alarm, 2 Trains and a Bus Get Her to Work by 7 A.M.*, N.Y. Times (Aug. 17, 2017), https://www.nytimes.com/2017/08/17/business/economy/san-francisco-commute.html.

[69] 2007 and 2016 American Community Survey 1-Year Estimates, Table B08303 series (Travel Time To Work, Workers 16 years and over who did not work at home), https://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t (showing increase in commute time from 2007 to 2016 in California and Bay Area); 2007 and 2016 American Community Survey 1-Year Estimates, Table S802 series (Means of transportation to work by selected characteristics), https://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t (showing more Latino and noncitizen workers commuting to work by driving alone).

responders, courtroom and municipal service workers, construction workers, day care and home health care workers, retail clerks, and food service workers.[70]

137. In addition to being ill-conceived, CARB's new VMT measures are not statutorily authorized. The Legislature has repeatedly rejected proposed legislation to mandate that Californians reduce their use of cars and light duty trucks (e.g., personal pickup trucks), including most recently in 2017 (Senate Bill 150, Allen).

138. Only a different agency, the Office of Planning and Research ("OPR"), has legislative authority to regulate VMT. It has not done so. In Senate Bill 743 (2013), the Legislature authorized OPR to consider adopting VMT as a new threshold for assessing the significance of transportation impacts under CEQA, but only after OPR completed a rulemaking process and amended the regulatory requirements implementing CEQA, *i.e.*, the CEQA Guidelines (14 C.C.R. § 15000 *et seq.*) ("CEQA Guidelines"). OPR has commenced but not completed the process for amending the CEQA Guidelines as authorized by SB 743.

139. Instead of regulating VMT, CARB's role under SB 375 is to encourage higher density housing and public transit and thereby reduce GHGs. In this context, CARB has included VMT reduction metrics for helping achieve GHG reduction goals in current SB 375 targets.

140. In the past, when CARB proposed to establish standalone VMT reduction targets (independent of GHG emission reduction targets) it has been swamped with objections and concerns, including challenges to its legal authority to attempt to impose fees and restrictions on driving as a standalone mandate independent of regional GHG reduction targets.

141. Until its adoption of the 2017 Scoping Plan, CARB had rightly stopped short of purporting to set out standalone VMT reduction targets and methods. At the same meeting that CARB approved the 2017 Scoping Plan, CARB agreed to indefinitely postpone establishing regional VMT reduction targets for a variety of reasons (including but not limited to the fact that notwithstanding current efforts, VMT is actually increasing).

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[70] Adam Nagourney and Conor Dougherty, *The Cost of a Hot Economy in California: A Severe Housing Crisis,* N.Y. Times (July 17, 2017), https://www.nytimes.com/2017/07/17/us/california-housing-crisis.html.

142. Immediately following its determination to indefinitely postpone its proposal to adopt standalone VMT reduction targets, CARB nevertheless voted to approve the 2017 Scoping Plan's VMT reduction mandate, which includes in pertinent part a GHG measure requiring additional VMT reductions beyond the reductions achieved via SB 743 and SB 375. See Scoping Plan p. 25, Table 1, p. 101.

143. The inherent contradiction between the morning CARB agenda discussion indefinitely postponing establishing SB 375 VMT reduction targets, and CARB's afternoon agenda item approving the 2017 Scoping Plan, going above and beyond the VMT reductions CARB elected not to set a few hours earlier, caused widespread confusion. Even the CARB Board chair reported that she was "confused" – but CARB's unlawful action to mandate reduced driving by individual Californians was nevertheless unanimously approved in the 2017 Scoping Plan that CARB has now adopted.

144. In order to achieve these newly-mandated reductions in VMT, CARB intends to intentionally increase congestion to induce transit use. OPR's proposal for updating the CEQA Guidelines to include VMT as a metric for analyzing transportation impacts states that adding new roadway capacity increases VMT.[71] The OPR proposal further states that "[r]educing roadway capacity (i.e. a "road diet") will generally reduce VMT and therefore is presumed to cause a less than significant impact on transportation. Building new roadways, adding roadway capacity in congested areas, or adding roadway capacity to areas where congestion is expected in the future, typically induces additional vehicle travel." *Id.* at p. III:32.

145. Attempting to reduce VMT by purposefully increasing congestion by reducing roadway capacity will not lead to GHG emission reductions. Instead, increasing congestion will cause greater GHG emissions due to idling, not to mention increased criteria air pollutant[72] and

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[71] OPR, Revised Proposal on Updates to the CEQA Guidelines Evaluating Transportation Impacts in CEQA (Jan. 20, 2016), p. I:4, http://www.opr.ca.gov/docs/Revised_VMT_CEQA_Guidelines_Proposal_January_20_2016.pdf.

[72] The six criteria air pollutants designated by the Environmental Protection Agency ("EPA") are particulate matter ("PM"), ozone, nitrogen dioxide ("NO_2" or "NOx"), carbon monoxide ("CO"), sulfur dioxide ("SO_2"), and lead.

toxic air contaminant[73] emissions. CARB has no authority to impose a VMT limit and any VMT limit imposed by an agency must be approved in a formal rulemaking process.

146. As implemented, CARB's VMT reduction measure will not achieve the GHG reductions ascribed to it in the 2017 Scoping Plan and has no rational basis. In fact, it will increase air quality and climate related environmental impacts, something not analyzed in the EA for the 2017 Scoping Plan.

147. In addition, CARB has recently undergone an update of regional GHG emission reduction targets under SB 375 in which CARB stated that: "In terms of tons, CARB staff's proposed [SB 375] targets would result in an estimated additional reduction of approximately 8 million metric tons of CO2 per year in 2035 compared to the existing targets. The estimated remaining GHG emissions reductions needed would be approximately 10 million metric tons CO2 per year in 2035 based on the Scoping Plan Update scenario. These remaining GHG emissions reductions are attributed to new State-initiated VMT reduction strategies described in the Scoping Plan Update."[74]

148. Thus, CARB's only stated support for needing the VMT reduction mandates in the 2017 Scoping Plan is to close a gap to the Scoping Plan Update Scenario that the SB 375 targets will not meet. However, all of the allegedly "necessary" reductions in the Scoping Plan Update Scenario are based on CARB's unlawful "cumulative gap" reduction requirement, which, as described above, improperly ballooned the GHG reductions required from 60 to 224 $MMTCO_2e$ based on the "Known Commitments Scenario" and from 129 to 621 $MMTCO_2e$ based on the "Reference Case Scenario."

149. Because of CARB's unlawful "cumulative gap" calculation, CARB now argues that the VMT reduction mandates are necessary, but the only reason they are necessary is to meet the unlawful "cumulative gap" reduction requirements.

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[73] Toxic air contaminants, or TACs, include benzene, hexavalent chrome, cadmium, chloroform, vinyl chloride, formaldehyde, and numerous other chemicals.

[74] California Air Resources Board, Updated Final Staff Report, Proposed Update to the SB 375 Greenhouse Gas Emission Reduction Targets (Feb. 2018), p. 35, https://www.arb.ca.gov/cc/sb375/sb375_target_update_final_staff_report_feb2018.pdf.

150. There is also no evidence that CARB's estimated 10 MMTCO2e per year reductions based on the VMT reduction mandate is in any way achievable. The Right Type, Right Place report[75] estimates only 1.79 MMTCO2e per year will be reduced from both lower VMT and smaller unit size houses using less energy and thus creating lower operational emissions.

151. The Staff Report for SB 375 acknowledges that VMT has increased, that the results of new technologies are at best mixed in early reports as to VMT reductions, and that the correlation between VMT and GHG is declining.[76] There is no evidence that the 10 MMTCO2e per year reductions based on the VMT reduction mandate in the 2017 Scoping Plan is in any way something other than a number created solely based on the fundamental miscalculation about the 2030 target demonstrated by the "cumulative gap" methodology in the 2017 Scoping Plan.

2. Unlawful CEQA Net Zero GHG Threshold

152. The 2017 Scoping Plan also sets a net zero GHG threshold for all projects subject to CEQA review, asserting that "[a]chieving no net additional increase in GHG emissions, resulting in no contribution to GHG impacts, is an appropriate overall objective for new development". Scoping Plan, p. 101-102.

153. The Scoping Plan directs that this new CEQA "zero molecule" GHG threshold be presumptively imposed by all public agencies when making all new discretionary decisions to approve or fund projects in all of California, where under CEQA "project" is an exceptionally broad legal term encompassing everything from transit projects to recycled water plants, from the renovation of school playgrounds to building six units of affordable housing, from the adoption of General Plans applicable to entire cities and counties to the adoption of a single rule or regulation.

154. This is an unauthorized, unworkable and counterproductive standard as applied to new housing projects. CEQA applies to the "whole of a project", which includes construction

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[75] Nathaniel Decker et al., Right Type Right Place: Assessing the Environmental and Economic Impacts of Infill Residential Development through 2030, U.C. Berkeley Terner Center for Housing Innovation and Center for Law, Energy and the Environment (Mar. 2017), https://ternercenter.berkeley.edu/right-type-right-place.

[76] California Air Resources Board, Updated Final Staff Report, Proposed Update to the SB 375 Greenhouse Gas Emission Reduction Targets (Feb. 2018), p. 19, https://www.arb.ca.gov/cc/sb375/sb375_target_update_final_staff_report_feb2018.pdf.

activities, operation of new buildings, offsite electricity generation, waste management, transportation fuel use, and a myriad of other activities. Meeting a net zero threshold for these activities is not possible. While there have been examples of "net zero" buildings—which are more expensive than other housing[77]—none of these examples included the other components of a "project" as required by CEQA.

155. The Scoping Plan's "net zero" CEQA provisions also would raise housing and homeowner transportation costs and further delay completion of critically needed housing by increasing CEQA litigation risks—thereby exacerbating California's acute housing and poverty crisis.[78]

156. Despite CARB's claim that this "net zero" threshold is "guidance", CARB's status as the expert state agency on GHG emissions means that all lead agencies or project proponents will have to accept this standard in CEQA review unless they can prove by substantial evidence that a project cannot meet the standard.

157. The threshold has immediate evidentiary weight as the expert conclusion of the state's expert GHG agency. An agency's failure to use the 2017 Scoping Plan's CEQA threshold has already been cited as legal error in the comment letter preceding the expected lawsuit against the Northlake housing project in Los Angeles.[79]

158. A "net zero" GHG threshold is inconsistent with current California precedent affirming that compliance with law is generally an acceptable CEQA standard. See, e.g., *Center for Biological Diversity v. Dept. of Fish and Wildlife* (2016) 62 Cal.4th 204, 229 ("*Newhall*") (a lead agency can assess consistency with AB 32 goal by looking to compliance with regulatory programs). This includes, but is not limited to, using compliance with the cap-and-trade program as appropriate CEQA mitigation for GHG and transportation impacts.

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[77] LAO, Evaluating California's Pursuit of Zero Net Energy State Buildings (Nov. 14, 2017), http://www.lao.ca.gov/Publications/Report/3711.

[78] Chang-Tai Hsieh and Enrico Moretti, *How Local Housing Regulations Smother the U.S. Economy*, N.Y. Times (Sept. 6, 2017), https://www.nytimes.com/2017/09/06/opinion/housing-regulations-us-economy.html.

[79] Center for Biological Diversity, Letter to Los Angeles County (April 16, 2018), http://planning.lacounty.gov/assets/upl/case/tr073336_correspondence-20180418.pdf.

159. The Scoping Plan's expansive new "net zero" GHG CEQA threshold is directly at odds with, and is dramatically more stringent than, the existing CEQA regulatory threshold for GHG emissions. This existing threshold was adopted by OPR pursuant to specific authorization and direction from the Legislature in SB 97. In the SB 97 rulemaking context, OPR, in its Statement of Reasons, expressly rejected a "zero molecule" or "no net increase" GHG threshold (now adopted by CARB without Legislative authority) as being inconsistent with, and not supported by, CEQA's statutory provisions or applicable judicial precedent. OPR stated that "[n]otably, section 15064.4(b)(1) is not intended to imply a zero net emissions threshold of significance. As case law makes clear, there is no "one molecule rule" in CEQA."[80]

160. In January of 2017, OPR commenced a formal rulemaking process for what it describes as a "comprehensive" set of regulatory amendments to the CEQA Guidelines. After adoption of the 2017 Scoping Plan, OPR has not proposed to change the existing GHG thresholds in the Guidelines to conform with CARB's unauthorized new "net zero" GHG threshold. Instead, OPR has expressly criticized reliance on a numerical project-specific assessment of GHGs.

161. In short, CARB's "net zero" GHG threshold is inconsistent with OPR's legal conclusion that CEQA cannot be interpreted to impose a "net zero" standard.[81]

162. In addition to being Legislatively unauthorized and unlawful, the "net zero" GHG threshold would operate unconstitutionally so as to disproportionately disadvantage low income minorities in need of affordable housing relative to wealthier, whiter homeowners who currently occupy the limited existing housing stock.[82] This disadvantage arises because of the use of CEQA

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[80] OPR, Final Statement of Reasons for Regulatory Action, Amendments to the State CEQA Guidelines Addressing Analysis and Mitigation of Greenhouse Gas Emissions Pursuant to SB 97 (Dec. 2009), p. 25, http://resources.ca.gov/ceqa/docs/Final_Statement_of_Reasons.pdf.

[81] See OPR, Proposed Updates to the CEQA Guidelines (Nov. 2017), p. 81-85, http://opr.ca.gov/docs/20171127_Comprehensive_CEQA_Guidelines_Package_Nov_2017.pdf.

[82] See Richard Rothstein, Color of Law: A Forgotten History of How Our Government Segregated America (2017) for a historical review of how zoning and land use laws were designed to promote discrimination against African Americans and other communities of color, patterns that, in many instances, have been maintained to this day; see also Housing Development Toolkit, The White House (Sept. 2016), https://www.whitehouse.gov/sites/whitehouse.gov/files/images/Housing_Development_Toolkit%20f.2.pdf.

litigation by current homeowners to block new housing for others, including especially low income housing for minorities.[83]

163. Under CEQA, once an impact is considered "significant", it must be "mitigated" by avoidance or reduction measures "to the extent feasible." Pub. Res. Code §§ 21002, 21002.1; 14 C.C.R. § 15020(a)(2). By imposing a presumptive "net zero" GHG threshold on all new projects pursuant to CEQA, CARB has instantly and unilaterally increased the GHG CEQA mitigation mandate to "net zero" unless a later agency applying CEQA can affirmatively demonstrate, through "substantial evidence", that this threshold is not "feasible" as that term is defined in the CEQA Guidelines.

164. Under CEQA, any party—even an anonymous litigant—can file a CEQA lawsuit challenging the sufficiency of a project's analysis and mitigation for scores of "impacts," including GHG emissions. *See Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155.

165. Anonymous use of CEQA lawsuits, as well as reliance on CEQA lawsuits to advance economic objectives such as fast cash settlements, union wage agreements, and competitive advantage, has been repeatedly documented—but Governor Brown has been unable

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[83] See Jennifer L. Hernandez, California Environmental Quality Act Lawsuits and California's Housing Crisis, 24 Hastings Envtl. L.J. (2018), https://www.hklaw.com/files/Uploads/Documents/Articles/121317_HELJ_Jennifer_Hernandez.pdf; see also Jennifer Hernandez, David Friedman, and Stephanie DeHerrera, In the Name of the Environment Update: CEQA Litigation Update for SCAG Region (2013-2015) (Jul. 2016), https://www.hklaw.com/files/UPloads/Documents/Alerts/Environment/InfillHousingCEQALawsuits.pdf; Jennifer Hernandez, David Friedman, and Stephanie DeHerrera, In the Name of the Environment: Litigation Abuse Under CEQA (August 2015), https://www.hklaw.com/publications/in-the-name-of-the-environment-litigation-abuse-under-ceqa-august-2015/.

to secure the Legislature's support for CEQA because, as he explains, unions use CEQA to leverage labor agreements.[84]

166. Using CEQA to advance economic rather than environmental objectives, and allowing anonymous lawsuits to mask more nefarious motives including racism and extortion, has established CEQA litigation (and litigation threats) as among the top reasons why adequate housing supplies have not been built near coastal jobs centers.[85]

167. The "net zero" threshold, as applied to new housing projects in California, adds significantly to the risk and CEQA litigation outcome uncertainty faced by persons who wish to build such housing.[86] Not even the California Supreme Court, in *Newhall, supra,* 62 Cal.4th 204, could decide how CEQA should apply to a global condition like climate change in the context of considering the GHG impacts of any particular project. Instead, the Supreme Court identified four "potential pathways" for CEQA compliance. Notably, none of these was the "net zero" threshold adopted by CARB in its 2017 Scoping Plan.

168. The California Supreme Court has declined to mandate, under CEQA, a non-statutory GHG threshold. Instead, the California Supreme Court has recognized that this area remains in the province of the Legislature, which has acted through directives such as SB 375. *Cleveland National Forest Foundation v. San Diego Assn. of Gov'ts* (2017) 3 Cal.5th 497 ("*SANDAG*").

169. As explained in The Two Hundred's comment letter, and referenced academic and other studies in that letter, the top litigation targets of CEQA lawsuits statewide are projects that

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[84] See Jennifer Hernandez, David Friedman, and Stephanie DeHerrera, In the Name of the Environment Update: CEQA Litigation Update for SCAG Region (2013-2015) (Jul. 2016), https://www.hklaw.com/files/UPloads/Documents/Alerts/Environment/InfillHousingCEQALawsuits.pdf, p. 10-12 (stating Governor Brown's 2016 conclusion that CEQA litigation reform was politically impossible because labor unions use litigation threats to "hammer" project sponsors into agreeing to enter into union labor agreements, and Building Trades Council lobbyist Caesar Diaz testimony in "strong opposition" to legislative proposal to require disclosure of the identity and interests of those filing CEQA lawsuits at the time CEQA lawsuits are filed, rather than at the end of the litigation process when seeking attorneys' fees, wherein Mr. Diaz concluded that requiring such disclosure would "dismantle" CEQA).

[85] Legislative Analyst's Office, California's High Housing Costs: Causes and Consequences, May 17, 2015, http://www.lao.ca.gov/reports/2015/finance/housing-costs/housing-costs.aspx.

[86] See *Id.*

include housing.[87] Over a three year period in the SCAG region, nearly 14,000 housing units were challenged in CEQA lawsuits, even though 98% of these units were located in already developed existing communities and 70% were located within a short distance of frequent transit and other existing infrastructure and public services. This and a referenced prior study also showed that the vast majority of CEQA lawsuits filed statewide are against projects providing housing, infrastructure and other public services and employment uses within existing communities.[88]

170. Thus, the same minority families victimized by the housing-induced poverty crisis, and forced to drive ever longer distances to qualify for housing they can afford to rent or buy are disproportionately affected by CEQA lawsuits attacking housing projects that are proximate to jobs.

171. Expanding CEQA to require only future occupants of acutely needed housing units to double- and triple-pay to get to and from work with a CEQA mitigation obligation to purchase GHG offsets to satisfy a "net zero" threshold unlawfully and unfairly discriminates against new occupants in violation of equal protection and due process.

172. Finally, CARB's "net zero" threshold fails to address the likelihood that it will actually be counterproductive because of "leakage" of California residents driven out to other states because of unaffordable housing prices.[89] Including this measure in the 2017 Scoping Plan bypasses statutory requirements to discourage and minimize "leakage"—movement of

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[87] See Jennifer L. Hernandez, California Environmental Quality Act Lawsuits and California's Housing Crisis, 24 Hastings Envtl. L.J. (2018), https://www.hklaw.com/files/Uploads/Documents/Articles/121317_HELJ_Jennifer_Hernandez.pdf; see also Jennifer Hernandez, David Friedman, and Stephanie DeHerrera, In the Name of the Environment Update: CEQA Litigation Update for SCAG Region (2013-2015) (Jul. 2016), https://www.hklaw.com/files/UPloads/Documents/Alerts/Environment/InfillHousingCEQALawsuits.pdf; Jennifer Hernandez, David Friedman, and Stephanie DeHerrera, In the Name of the Environment: Litigation Abuse Under CEQA (August 2015), https://www.hklaw.com/publications/in-the-name-of-the-environment-litigation-abuse-under-ceqa-august-2015/

[88] *Ibid.*

[89] California experienced a net loss of 556,710 former residents to other states during 2010 to 2017. U.S. Census Bureau, Table 4. Cumulative Estimates of the Components of Resident Population Change for the United States, Regions, States, and Puerto Rico: April 1, 2010 to July 1, 2017 (NST-EST2017-04) (Dec. 2017), https://www.census.gov/data/datasets/2017/demo/popest/nation-total.html.

economically productive activities to other states or countries that have much higher GHG emissions on a per capita basis than California. Imposing "net zero" standards that end up shutting down or blocking economic activities in California results in a global increase in GHGs when those activities move to other states or countries with higher per capita GHG emissions.[90]

173. It is noteworthy that the GWSA and SB 32 "count" only GHG emissions produced within the state, and from the generation of out-of-state electricity consumed in the state. When a family moves from California to states such as Texas (nearly three times higher per capita GHG emissions) or Nevada (more than double California's per capita GHG emissions), *global* GHG emissions increase even though California's GHG emissions decrease.

174. The housing crisis has resulted in a significant emigration of families that cannot afford California housing prices, and this emigration increases global GHG emissions—precisely the type of "cumulative" contribution to GHGs that OPR explains should be evaluated under CEQA, rather than CARB's net zero GHG threshold which numerically-focuses on project-level GHG emissions and mitigation.[91]

175. The Scoping Plan's CEQA threshold is appropriately justiciable, and should be vacated for the reasons set forth herein.

3. Unlawful Per Capita GHG Targets for Local Climate Action Plans

176. California's per capita GHG emissions are already far lower than all but two states. The only state with low per capita GHG emissions that is comparable to California is New York, which has a lower per capita GHG emission level but also six nuclear power plants

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[90] Philip Reese, *California Exports Its Poor to Texas, Other States, While Wealthier People Move In*, The Sacramento Bee (Mar. 5, 2017), http://www.sacbee.com/news/state/california/article136478098.html; Drew Lynch, *Californians Consider Moving Due to Rising Housing Costs, Poll Finds*, Cal Watchdog (Sept. 21, 2017), https://calwatchdog.com/2017/09/21/californians-consider-moving-due-rising-housing-costs-poll-finds/; U.S. Energy Information Agency, State Carbon Dioxide Emissions Data, October 2017, https://www.eia.gov/environment/emissions/state/.

[91] Philip Reese, *California Exports Its Poor to Texas, Other States, While Wealthier People Move In*, The Sacramento Bee (Mar. 5, 2017), http://www.sacbee.com/news/state/california/article136478098.html; Drew Lynch, *Californians Consider Moving Due to Rising Housing Costs, Poll Finds*, Cal Watchdog (Sept. 21, 2017), https://calwatchdog.com/2017/09/21/californians-consider-moving-due-rising-housing-costs-poll-finds/; U.S. Energy Information Agency, State Carbon Dioxide Emissions Data, October 2017, https://www.eia.gov/environment/emissions/state/.

(compared to California's one) as well as more reliable hydropower from large dams that are less affected by the cyclical drought cycles affecting West Coast rivers.[92]

177. California's current very low per capita GHG emissions are approximately 11 MMTCO2e.

178. The existing CEQA Guidelines include a provision that allows projects that comply with locally-adopted "climate action plans" ("CAPs") to conclude that project-related GHG emissions are less than significant, and thus require no further mitigation that would add to the cost of new housing projects.

179. In *Newhall, supra,* 62 Cal.4th at 230, the California Supreme Court endorsed CAPs, and wrote that a project's compliance with an approved CAP could be an appropriate "pathway" for CEQA compliance. No local jurisdiction is required by law to adopt a CAP, but if a CAP is adopted, then the Supreme Court has held that it must have enforceable measures to actually achieve the CAP's GHG reduction target. *SANDAG, supra,* 3 Cal.5th 497.

180. The CAP compliance pathway through CEQA was upheld in *Mission Bay Alliance v. Office of Community Invest. & Infrastructure* (2016) 6 Cal.App.5th 160. This compliance pathway provides a more streamlined, predictable, and generally cost-effective pathway for housing and other projects covered by the local CAP.

181. In stark contrast, CARB's unlawful new per capita GHG requirements effectively direct local governments—cities and counties—to adopt CAPs that reduce per capita GHG emissions from eleven to six MMTCO2e per capita by 2030, and to two MMTCO2e per capita by 2050. This mandate is unlawful.

182. First, CARB has no statutory authority to impose any 2050 GHG reduction measure in CAPs or otherwise since the Legislature has repeatedly declined to adopt a 2050 GHG target (including by rejecting earlier versions of SB 32 that included such a 2050 target), and the California Supreme Court has declined to interpret CEQA to mandate a 2050 target based on an Executive Order. *SANDAG, supra,* 3 Cal.5th at 509; *Newhall, supra,* 62 Cal.4th at 223.

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[92] U.S. Energy Information Agency, State Carbon Dioxide Emissions Data, October 2017, https://www.eia.gov/environment/emissions/state/.

183. Second, the Scoping Plan attributes the vast majority of state GHG emissions to transportation, energy, and stationary source sectors over which local governments have little or no legal jurisdiction or control. A local government cannot prohibit the sale or use of gasoline or diesel-powered private vehicles, for example—nor can a local government regulate and redesign the state's power grid, or invent and mandate battery storage technology to capture intermittent electricity produced from solar and wind farms for use during evening hours and cloudy days.

184. The limited types of GHG measures that local governments can mandate (such as installation of rooftop solar, water conservation, and public transit investments) have very small—or no—measurable quantitative effect on GHG emission reductions. The 2017 Scoping Plan Appendix recommending local government action does not identify any measure that would contribute more than a tiny fraction toward reducing a community's per capita GHG emissions to six metric tons or two metric tons, respectively.

185. Additionally, under state law, local governments' authority to require more aggressive GHG reductions in buildings is subject to a cost-effectiveness test decided by the California Building Standards Commission ("CBSC")—the same CBSC that has already determined that "net zero", even for single family homes and even for just the electricity used in such homes, is *not* yet feasible or cost-effective to impose.[93]

186. Third, it is important to consider the per capita metrics that the 2017 Scoping Plan wants local governments to achieve in their localized climate action plans in a real world context. Since most of the world's energy is still produced from fossil fuels, energy consumption is still highly correlated to economic productivity and per capita incomes and other wealth-related metrics such as educational attainment and public health.[94] The suggested very low per capita

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[93] California Energy Commission, 2019 Building Energy Efficiency Standards PreRulemaking Presentation - Proposed 2019 Building Energy Efficiency Standards ZNE Strategy (Aug. 24, 2017), http://docketpublic.energy.ca.gov/PublicDocuments/17-BSTD-01/TN220876_20170824T105443_82217_ZNE_Strategy_Presentation.pdf.

[94] See Mengpin Ge, Johannes Friedrich, and Thomas Damassa, 6 Graphs Explain the World's Top 10 Emitters, World Resources Institute (Nov. 25, 2014), https://wri.org/blog/2014/11/6-graphs-explain-world%E2%80%99s-top-10-emitters (see tables entitled "Per Capita Emissions for Top 10 Emitters" and "Emissions Intensity of Top 10 Emitters" showing that emissions are generally linked to GDP).

metrics in the 2017 Scoping Plan are currently only achieved by countries with struggling economies, minimal manufacturing and other higher wage middle income jobs, and extremely high global poverty rates.

187. Growing economies such as China and India bargained for, and received, permission to substantially increase their GHG emissions under the Paris Accord precisely because economic prosperity remains linked to energy use.[95] This is not news: even in the 1940's, the then-Sierra Club President confirmed that inexpensive energy was critical to economic prosperity AND environmental protection.

188. Nor has CARB provided the required economic or environmental analysis that would be required to try to justify its irrational and impractical new per capita GHG target requirements. As with CARB's project-level "net zero" CEQA threshold, the per capita CEQA expansion for CAPs does not quantify the GHG emission reductions to be achieved by this measure.

189. Finally, these targets effectively create CEQA thresholds as compliance with a CAP is recognized by the California Supreme Court as a presumptively valid CEQA compliance pathway. *Newhall, supra,* 62 Cal.4th at 230 (stating that local governments can use climate action plans as a basis to tier or streamline project-level CEQA analysis). The targets clearly establish CARB's position on what would (or would not) be consistent with the 2017 Scoping Plan and the State's long-term goals. Courts have stated that GHG determinations under CEQA must be consistent with the statewide CARB Scoping Plan goals, and that CEQA documents taking a goal-consistency approach to significance need to consider a project's effects on meeting the State's longer term post-2020 goals. Thus, these per capita targets are essentially self-implementing CEQA requirements that lead and responsible agencies will be required to use.

190. The CAP measure thus effectively eliminates the one predictable CEQA GHG compliance pathway that has been upheld by the courts, compliance with an adopted CAP. The

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[95] Marianne Lavelle, *China, India to Reach Climate Goals Years Early, as U.S. Likely to Fall Far Short,* Inside Climate News (May 16, 2017), https://insideclimatenews.org/news/15052017/china-india-paris-climate-goals-emissions-coal-renewable-energy.

pathway that CARB's per capita GHG targets would unlawfully displace is fully consistent with the existing CEQA Guidelines adopted pursuant to full rulemaking procedures based on express Legislative direction.

191. In short, the 2017 Scoping Plan directs local governments to adopt CAPs—which the Supreme Court has explained must then be enforced—with per capita numeric GHG reduction mandates in sectors that local governments have no legal or practical capacity to meet, without any regard for the consequential losses to middle income jobs in manufacturing and other business enterprises, or to the loss of tax revenues and services from such lost jobs and businesses,[96] or to the highly disparate impact that such anti-jobs measures would have on minority populations already struggling to get out of poverty and afford housing.

192. While the 2017 Scoping Plan acknowledges that some local governments may have difficulty achieving the per capita targets if their communities have inherently higher GHG economic activities, such as agriculture or manufacturing, such communities are required to explain why they cannot meet the numeric targets—and withstand potential CEQA lawsuit challenges from anyone who can file a CEQA lawsuit.

193. As with CARB's project-level "net zero" CEQA threshold, CARB's new per capita GHG targets are entirely infeasible, unlawful, and disparately affect those in most need of homes they can afford with jobs that continue to exist in manufacturing, transportation, and other sectors having GHG emissions that are outside the jurisdiction and control of local governments.

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[96] Just four states—Ohio, Pennsylvania, Georgia and Indiana—collectively have a population and economy comparable with California. With a combined gross product of $2.25 trillion in 2016, these four states would be the 8th largest economy in the world if considered a nation. Yet despite achieving five times more GHG emission reductions than California since 2007, in 2016 these four states had 560,000 fewer people in poverty and 871,000 more manufacturing jobs (including 200,000 new jobs from 2009 to 2017 compared with just 53,000 in California). U.S. Bureau of Labor Statistics, Monthly Total Nonfarm Employment, Seasonally Adjusted, https://www.bls.gov/data/; U.S. Bureau of Economic Analysis, Table 3. Current-Dollar Gross Domestic Product (GDP) by State, 2016:Q1-2017:Q3, https://www.bea.gov/newsreleases/regional/gdp_state/qgdpstate_newsrelease.htm; Liana Fox, The Supplemental Poverty Measure: 2016, U.S. Census Bureau Report Number: P60-261 (Sept. 21, 2017), https://www.census.gov/library/publications/2017/demo/p60-261.html; U.S. Census Bureau, 2016 American Community Survey 1-Year Estimates, Table B15001, Sex by age by educational attainment for the population 18 years and over, https://factfinder.census.gov/.

They are also inconsistent with current standards and common sense and result in unjustifiable disproportionate adverse impacts on California minorities, including Petitioners.

4. Appendix C "Vibrant Communities" Policies Incorporating Unlawful VMT, "Net Zero" and CO2 Per Capita Standards

194. Chapter 5 of CARB's 2017 Scoping Plan explains that notwithstanding the other GHG Housing Measures (*e.g.*, the VMT reduction mandated in Chapter 2), California must do "more" to achieve the 2030 Target. With this in mind, CARB purports to empower eight new state agencies—including itself—with a new, non-legislated role in the plan and project approval process for local cities and counties. This hodgepodge of unlegislated, and in many cases Legislatively-rejected, new "climate" measures is included in what the Scoping Plan calls a "Vibrant Communities" appendix.

195. Cities and counties have constitutional and statutory authority to plan and regulate land use, and related community-scale health and welfare ordinances. Cities and counties are also expressly required to plan for adequate housing supplies, and in response to the housing crisis and resulting poverty and homeless crisis, in 2017 the Legislature enacted 15 new bills designed to produce more housing of all types more quickly. These include: Senate Bills ("SB") 2, SB 3, SB 35, SB 166, SB 167, SB 540, SB 897, and Assembly Bills ("AB") 72, AB 73, AB 571, AB 678, AB 1397, AB 1505, AB 1515, and AB 1521.

196. The Legislature has periodically, and expressly, imposed new statutory obligations on how local agencies plan for and approve land use projects. For example, in recent years, the Legislature required a greater level of certainty regarding the adequacy of water supplies as well as expressly required new updates to General Plans, which serve as the "constitution" of local land use authority, to expressly address environmental justice issues such as the extent to which poor minority neighborhoods are exposed to disproportionately higher pollution than wealthier and whiter neighborhoods.

197. Local government's role in regulating land uses, starting with the Constitution and then shaped by scores of statutes, is where the "rubber hits the road" on housing: without local

government approval of housing, along with the public services and infrastructure required to support new residents and homes, new housing simply cannot get built.

198. The Legislature has repeatedly authorized and/or directed specific agencies to have specific roles in land use decisionmaking.

199. The Legislature also is routinely asked to impose limits on local land use controls that have been rejected during the legislative process, such as the VMT reduction mandates described above. The Vibrant Communities Scoping Plan appendix is a litany of new policies, many of which were previously considered and rejected by the Legislature, directing eight state agencies to become enmeshed in directing the local land use decisions that under current law remain within the control of cities and counties (and their voting residents) and not within any role or authority delegated by the Legislature.

200. Just a few examples of Vibrant Community Scoping Plan measures adopted by CARB that have been expressly considered and rejected by the Legislature or are not legal include:

(A) **Establishing mandatory development area boundaries (urban growth boundaries) around existing cities,** that cannot be changed even if approved by local voters as well as the city and county, to encourage higher density development (*e.g.*, multi-story apartments and condominiums) and to promote greater transit use and reduce VMT. An authoritative study that CARB funded, as well as other peer reviewed academic studies, show that there is no substantial VMT reduction from these high density urban housing patterns—although there is ample confirmation of "gentrification" (displacement of lower income, disproportionately minority) occupants from higher density transit neighborhoods to distant suburbs and exurbs where workers are forced to drive greater distances to their jobs.[97] Mandatory urban growth boundaries have been routinely rejected in the Legislature. See AB 721 (Matthews, 2003)

[97] UCLA Department of Urban and Regional Planning, Oriented For Whom? The Impacts of TOD on Six Los Angeles Neighborhoods (June 2, 2015), http://www.urbandisplacement.org/sites/default/files/images/spring_2015_tod.pdf.

(proposing the addition of mandatory urban growth boundaries in the land use element of municipalities' general plans).

(B) **Charging new fees for cities and counties to pay for "eco-system services"** such as carbon sequestration from preserved vegetation on open space forests, deserts, agricultural and rangelands. Taxes or fees could not be imposed on residents of Fresno or Los Angeles to pay for preservation of forests in Mendocino or watersheds around Mount Lassen unless authorized by votes of the people or the Legislature—*except* that payment of fees has become a widespread "mitigation measure" for various "impacts" under CEQA. The 2017 Scoping Plan's express approval of the "Vibrant Communities" Appendix creates a massive CEQA mitigation measure work-around that can be imposed in tandem with agency approvals of local land use plans and policies that entirely bypasses the normal constitutional and statutory requirements applicable to new fees and taxes. Since CEQA applies only to new agency approvals, this unlawful and unauthorized framework effectively guarantees that residents of newly-approved homes will be required to shoulder the economic costs of the additional "mitigation" measures. This idea of taxation has been rejected by voter initiatives such as Proposition 13 (which limits ad valorem tax on real property to 1 percent and requires a 2/3 vote in both houses to increase state tax rates or impose local special taxes) and Proposition 218 (requiring that all taxes and most charges on property owners are subject to voter approval).

(C) **Intentionally worsening roadway congestion**, even for voter-funded and CARB-approved highway and roadway projects, to "induce" people to rely more on walking, biking, and public transit, and reduce VMT. Efficient goods movement, and avoidance of congestion, on California's highways and roads is required under both federal and state transportation and air quality laws. This component of "Vibrant Communities" is another example of a VMT reduction mandate, but is even more flatly inconsistent with applicable laws and common sense. Voters have routinely approved funding for new carpool lanes and other congestion relief projects. The goods movement industry—which is linked to almost 40% of all economic activity in Southern California and is critical to agricultural and other product-based business sectors throughout

California—cannot function under policies that intentionally increase congestion.[98] CARB has itself approved hundreds of highway improvement projects pursuant to the Legislative mandates in SB 375—yet the "Vibrant Communities" appendix unilaterally rejects this by telling Californians not to expect any relief from gridlock, ever again. The Legislature and state agencies have also consistently rejected VMT reduction mandates. See SB 150 (Allen, 2017) (initially requiring regional transportation plans to meet VMT reductions but modified before passage); SB 375 (Steinberg, 2008) (early version stating bill would require regional transportation plan to include preferred growth scenario designed to achieve reductions in VMT but modified before passage).

(D) **Mileage-based road pricing strategies which charge a fee per miles driven.** These types of "pay as you drive" fees are barred by current California law, which prohibits local agencies from "imposing a tax, permit fee or other charge" in ways that would create congestion pricing programs. Vehicle Code § 9400.8. Yet CARB attempts to override a Legislative mandate via the 2017 Scoping Plan and its "Vibrant Communities" strategies.

201. Through the Vibrant Communities strategies, CARB attempts to give state agencies expansive authority and involvement in city and county decisionmaking. The 2017 Scoping Plan asserts that the Vibrant Communities strategies will reduce GHG emissions by an amount that is "necessary" to achieving California's 2030 Target. However, no effort is made by CARB to quantify the reductions it anticipates would result from injecting these agencies into local decisionmaking processes. Instead, CARB merely states that the "Vibrant Communities" appendix is a supposedly-necessary step to meet the 2030 Target.

202. The eight named state agencies CARB attempts to give unauthorized authority over local actions are:[99]

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[98] Edward Humes, *Four Easy Fixes for L.A. Traffic*, L.A. Times (Apr. 10, 2016), http://www.latimes.com/opinion/livable-city/la-oe-humes-why-cant-trucks-and-cars-just-get-along-20160410-story.html; Eleanor Lamb, *California Eyes Future Projects to Relieve Freight Congestion*, Transport Topics (Mar. 26, 2018), http://www.ttnews.com/articles/california-eyes-future-projects-relieve-freight-congestion.

[99] Several of the eight named agencies are parent agencies, each of which has several subordinate agencies and departments. If these are counted, they collectively elevate the number of state agencies being coopted to join in CARB's local land use power grab to nearly twenty.

(1) **Business, Consumer Services and Housing Agency**, which among other subordinate agencies includes the Department of Housing and Community Development (HCD), which alone among these agencies has direct statutory responsibility for designating housing production and corresponding land use planning requirements for cities and counties;

(2) **California Environmental Protection Agency**, which is the parent agency for CARB as well as several other agencies and departments;

(3) **California Natural Resources Agency**, another parent agency of subordinate agencies and departments;

(4) **California State Transportation Agency**, most notably **Caltrans** – which the Scoping Plan would redirect from implementing their statutory responsibilities to reduce congestion and facilitate transportation on the state's highways to instead advancing CARB's "road diet" policy of intentionally increasing congestion to satisfy CARB's desire to induce more public transit ridership;

(5) **California Health and Human Services Agency**, which among other duties administers health and welfare assistance programs;

(6) **California Department of Food and Agriculture**, which among other duties regulates food cultivation and production activities;

(7) **Strategic Growth Council**, formed in 2008 by SB 732, which is tasked with "coordinating" activities of state agencies to achieve a broad range of goals but has no independent statutory authority to regulate housing or local land use plans and projects; and

(8) **Governor's Office of Planning and Research**, which has statutory responsibility to issue the CEQA Guidelines as well as "advisory" guidelines for local agency preparation of General Plans pursuant to Gov. Code § 65040.

203. The "Vibrant Communities" Appendix includes provisions that conflict with applicable law and/or have been rejected by the Legislature and cannot now be imposed by CARB through the 2017 Scoping Plan given California's comprehensive scheme of agency-allocated land use obligations (certain agencies—such as California Department of Fish and

Game, the Regional Water Quality Control Boards, and the Coastal Commission—already possess land use authority or obligations based on statutory or voter-approved schemes).

204. If CARB intends that other agencies be imbued with similar land use authority, it should ask the Legislature for such authority for those agencies, not its own Board. The "Vibrant Communities" Appendix should be struck from the 2017 Scoping Plan for this reason.

205. Less housing that is more expensive (urban growth boundary)[100], increased housing cost (CEQA mitigation measure fees), and ever-worsening gridlock resulting in ever-lengthier commutes with ever-increasing vehicular emissions and ever-reduced time at home with children, is the dystopian "necessity" built into the "Vibrant Communities" appendix.

206. Bureaucrats and tech workers in the "keyboard" economy who can work remotely, with better wages, benefits and job security that remove the economic insecurity of lifetime renter status, should be just fine. They can live in small apartments in dense cities filled with coffee shops and restaurants, rely on home delivery of internet-acquired meals and other goods, and enjoy "flextime" jobs that avoid the drudgery of the five-day work week model.

207. But for the rest of the California populace—including particularly the people (disproportionately minorities) staffing those restaurants and coffee shops, delivering those goods, providing home healthcare and building and repairing our buildings and infrastructure, and those Californians that are actually producing food and manufacturing products that are consumed in California and around the world—"Vibrant Communities" is where they can't afford to live, where they sleep in their cars during the week, where they fall into homelessness for missing rental payments because of an illness or injury to themselves or a family member.[101] For these folks, "Vibrant Communities" amounts to an increase in poverty, homelessness, and premature "despair deaths" as well as permanent drop outs from the work force.

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[100] Shishir Mathur, Impact of Urban Growth Boundary on Housing and Land Prices: Evidence from King County, Washington, Journal of Housing Studies Vol. 29 – Issue 1 (2014), https://tandfonline.com/doi/abs/10.1080/02673037.2013.825695.

[101] Alastair Gee, *Low-income workers who live in RVs are being 'chased out' of Silicon Valley streets,* The Guardian (June 29 2017), https://www.theguardian.com/us-news/2017/jun/29/low-income-workers-rvs-palo-alto-california-homeless.

208. For the foregoing reasons, the "Vibrant Communities" appendix is an unlawful and unconstitutional attempt by CARB to supplant existing local land use law and policy processes with a top-down regime that is both counterproductive and discriminatory against already-disadvantaged minority Californians, including but not limited to Petitioners.

E. CARB's Inadequate Environmental Analysis and Adverse Environmental Effects of the 2017 Scoping Plan

209. Along with the 2017 Scoping Plan, CARB prepared an EA purporting to comply with CEQA requirements.[102]

210. Under its certified regulatory program, CARB need not comply with requirements for preparing initial studies, negative declarations, or environmental impact reports. CARB's actions, however, remain subject to other provisions of CEQA. CEQA Guidelines § 15250.

211. CARB's regulatory program is contained in 17 C.C.R. §§ 60005, 60006, and 60007. These provisions require the preparation of a staff report at least 45 days before the public hearing on a proposed regulation, which report is required to be available for public review and comment. It is also CARB's policy "to prepare staff reports in a manner consistent with the environmental protection purposes of [ARB's] regulatory program and with the goals and policies of [CEQA]." The provisions of the regulatory program also address environmental alternatives and responses to comments on the EA.

212. For purposes of its CEQA review, CARB defined the project as the Proposed Strategy for Achieving California's 2030 Greenhouse Gas Target (Scoping Plan) and the recommended measures in the 2017 Plan (Chapter 2).

213. The Draft EA was released on or about January 20, 2017 for an 80-day public review period that concluded on or about April 10, 2017.

214. On or about November 17, 2017, CARB released the Final EA. CARB did not modify the Draft EA to bring it into compliance with CEQA's requirements.

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[102] CARB has a regulatory program certified under Pub. Res. Code § 21080.5 and pursuant to this program CARB conducts environmental analyses to meet the requirements of CEQA.

215. The Final EA provides a programmatic analysis of the potential for adverse environmental impacts associated with implementation of the 2017 Scoping Plan. It also describes feasible mitigation measures for identified significant impacts.

216. The Final EA states that, although the 2017 Scoping Plan is a State-level planning document that recommends measures to reduce GHG emissions to achieve the 2030 target, and its approval does not directly lead to any adverse impacts on the environment, implementation of the measures in the Plan may indirectly lead to adverse environmental impacts as a result of reasonably foreseeable compliance responses.

217. The Final EA also states that CARB expects that many of the identified potentially significant impacts can be feasibly avoided or mitigated to a less-than-significant level either when the specific measures are designed and evaluated (e.g., during the rulemaking process) or through any project-specific approval or entitlement process related to compliance responses, which typically requires a project-specific environmental review.

218. The EA violated CEQA by failing to comply with its requirements in numerous ways, as described below.

1. Deficient Project Description

219. The EA's Project description was deficient because CARB did not assess the "whole of the project" as required by CEQA. The GHG Housing Measures are included in the 2017 Scoping Plan (in Chapters 2 and 5) and thus the "project" for CEQA purposes should have been defined to include potential direct and indirect impacts on the environment from the four GHG Housing Measures. Instead, CARB described the Project for CEQA purposes as the measures only in Chapter 2 of the 2017 Scoping Plan.

220. CARB has acknowledged that Chapter 5 of the 2017 Scoping Plan (which sets out the new GHG Housing Measures) was not part of what it analyzed in issuing the Scoping Plan. In CARB's words, "These recommendations in the 'Enabling Local Action' subchapter of the

Scoping Plan are not part of the proposed 'project' for purposes of CEQA review."[103] Thus, CARB admits that it did not even pretend to analyze the consequences of the provisions of Chapter 5 of the Scoping Plan.

221. The VMT reduction requirement is part of the Scoping Plan Scenario presented in Chapter 2 in the "Mobile Source Strategy".[104] Chapter 2 is included in the description of the Project in the EA but Chapter 5 is not, despite the fact that the VMT reduction mandate is found in both chapters.

222. For this reason, CARB applied an unreasonable and unlawful "project" definition and undermined CEQA's informational and decision-making purposes.

2. Improper Project Objectives

223. The Project objectives in the EA are also improperly defined in relation to the 2017 Scoping Plan, the unlawful GHG Housing Measures, and the goals explained in the 2017 Scoping Plan.[105] The EA states that the primary objectives of the 2017 Scoping Plan are:

- Update the Scoping Plan for achieving the maximum technologically feasible and cost-effective reductions in GHG emissions to reflect the 2030 target;
- Pursue measures that implement reduction strategies covering the State's GHG emissions in furtherance of executive and statutory direction to reduce GHG emissions to at least 40 percent below 1990 levels by 2030;
- Increase electricity derived from renewable sources from one-third to 50 percent;
- Double efficiency savings achieved at existing buildings and make heating fuels cleaner;
- Reduce the release of methane and other short-lived climate pollutants;

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[103] Supplemental Responses to Comments on the Environmental Analysis Prepared for the Proposed Strategy for Achieving California's 2030 Greenhouse Gas Target (Dec. 14, 2017), p. 14-16, https://www.arb.ca.gov/cc/scopingplan/final-supplemental-rtc.pdf.

[104] Scoping Plan, p. 25 Table 1: Scoping Plan Scenario (listing Mobile Source Strategy (Cleaner Technology and Fuels [CTF] Scenario)).

[105] Appendix F to 2017 Scoping Plan, Final Environmental Analysis for the Strategy for Achieving California's 2030 Greenhouse Gas Target, p. 10-11, https://www.arb.ca.gov/cc/scopingplan/2030sp_appf_finalea.pdf.

- Pursue emission reductions that are real, permanent, quantifiable, verifiable and enforceable;
- Achieve the maximum technologically feasible and cost-effective reductions in GHG emissions, in furtherance of reaching the statewide GHG emissions limit;
- Minimize, to the extent feasible, leakage of emissions outside of the State;
- Ensure, to the extent feasible, that activities undertaken to comply with the measures do not disproportionately impact low-income communities;
- Ensure, to the extent feasible, that activities undertaken pursuant to the measures complement, and do not interfere with, efforts to achieve and maintain the NAAQS and CAAQS and reduce toxic air contaminant ("TAC") emissions;
- Consider overall societal benefits, including reductions in other air pollutants, diversification of energy sources, and other benefits to the economy, environment, and public health;
- Minimize, to the extent feasible, the administrative burden of implementing and complying with the measure;
- Consider, to the extent feasible, the contribution of each source or category of sources to statewide emissions of GHGs;
- Maximize, to the extent feasible, additional environmental and economic benefits for California, as appropriate;
- Ensure that electricity and natural gas providers are not required to meet duplicative or inconsistent regulatory requirements.

224. Because CARB used the unlawful "cumulative gap" methodology to calculate the emission reductions that it was required to achieve by 2030, the 2017 Scoping Plan does not meet the project objectives as described in the EA, *i.e.*, to meet the 2030 Target.

225. As explained throughout this Petition, CARB's 2017 Scoping Plan and the unlawful GHG Housing Measures are not cost-effective, are contrary to law, are not equitable to all Californians, and will increase criteria and TAC emissions preventing attainment of the NAAQS and CAAQS

226. For this reason, other alternatives to the 2017 Scoping Plan, including an alternative without the GHG Housing Measures, should have been assessed in the EA.

3. Illegal Piecemealing

227. CEQA requires an environmental analysis to consider the whole of the project and not divide a project into two or more pieces to improperly downplay the potential environmental impacts of the project on the environment.

228. CARB improperly piecemealed its 2017 Scoping Plan and the GHG Housing Measures within it from its similar and contemporaneous SB 375 GHG target update.[106] Both projects address mandated GHG reductions based on VMT and thus should have been addressed as one project for CEQA purposes.

229. In separately issuing the 2017 Scoping Plan and the SB 375 GHG target update, CARB improperly piecemealed a project under CEQA and thus the EA is inadequate as a matter of law.

4. Inadequate Impact Analysis

230. The analysis in the EA also was deficient because the EA did not analyze impacts from implementing the four GHG Housing Measures in Chapter 5, including, but not limited to, the CEQA net zero threshold, the VMT limits, and per capita GHG CAP targets, and the suite of Vibrant Communities measures.

231. Potential environmental impacts from these GHG Housing Measures overlap substantially with similar high density, transit-oriented, automobile use reduction measures included in regional plans to reduce GHGs from the land use and transportation sectors under SB 375. CARB has reviewed and approved more than a dozen SB 375 regional plans, each of which is informed by its own "programmatic environmental impact report ("PEIR").

232. Each PEIR for each regional plan has identified multiple significant adverse environmental impacts which cannot be avoided or further reduced with feasible mitigation

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[106] California Air Resources Board, Updated Final Staff Report, Proposed Update to the SB 375 Greenhouse Gas Emission Reduction Targets (Feb. 2018), https://www.arb.ca.gov/cc/sb375/sb375.htm.

measures or alternatives.[107] In the first regional plan adopted for the SCAG region, California's most-populous region, the PEIR compared the impacts of developing all new housing within previously-developed areas in relation to developing half of such new housing in such areas, and the other half in previously-undeveloped areas near existing major infrastructure like freeways.

233. The SCAG 2012 PEIR concluded that the all-infill plan caused substantially more unavoidable significant adverse environmental impacts in relation to the preferred plan which divided new development equally between infill and greenfield locations.[108]

234. Following public comments and refinement of the PEIR (inclusive of the addition and modification of various mitigation measures to further reduce significant adverse environmental impacts), SCAG approved the mixed infill/greenfield plan instead of the all-infill alternative. CARB then approved SCAG's plan—first in 2012 and then again in 2016—as meeting California's applicable statutory GHG reduction mandates.[109]

235. The Scoping Plan's GHG Housing Measures now direct an infill only (or mostly infill) outcome, which SCAG's 2012 PEIR assessed and concluded caused far worse environmental impacts, even though it would result in fewer GHG emissions. In other words, SCAG's PEIR—and the other regional land use and transportation plan PEIRs prepared under SB 375—all disclosed a panoply of adverse non-GHG environmental impacts of changing California's land use patterns, and shaped both their respective housing plans and a broad suite of mitigation measures to achieve California's GHG reduction mandates while minimizing other adverse environmental impacts to California.

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[107] See SB 375 "Sustainable Communities Strategies" review page at https://www.arb.ca.gov/cc/sb375/sb375.htm, which includes links to the regional land use and transportation plans for multiple areas (which then further link to the PEIRs).

[108] SCAG, Final PEIR for the 2012-2035 RTP/SCS (April 2012), http://rtpscs.scag.ca.gov/Pages/Final-2012-PEIR.aspx.

[109] CARB Executive Order accepted the SCAG determination that its regional plan that balanced infill and greenfield housing development, and increased transit investments to encourage greater transit use without any VMT reduction mandate, would meet the GHG reduction targets mandated by law. See generally https://www.arb.ca.gov/cc/sb375/sb375.htm.

236. CARB's willful refusal to acknowledge, let alone analyze, the numerous non-GHG environmental impacts of its GHG Housing Measures in the 2017 Scoping Plan EA is an egregious CEQA violation.

237. Based on the greater specificity and the significant unavoidable adverse non-GHG environmental impacts identified in regional SB 375 plan PEIRs, the EA here clearly did not fully analyze the potential adverse environmental impacts from creating high-density, transit-oriented development that will result from the measures in the 2017 Scoping Plan, such as:

- Aesthetic impacts such as changes to public or private views and character of existing communities based on increased building intensities and population densities;
- Air quality impacts from increases in GHG, criteria pollutants, and toxic air contaminant emissions due to longer commutes and forced congestion that will occur from the implementation of the VMT limits in the 2017 Scoping Plan;
- Biological impacts from increased usage intensities in urban parks from substantial infill population increases;
- Cultural impacts including adverse changes to historic buildings and districts from increased building and population densities, and changes to culturally and religiously significant resources within urbanized areas from increased building and population densities;
- Urban agriculture impacts from the conversion of low intensity urban agricultural uses to high intensity, higher density uses from increasing populations in urban areas, including increasing the urban heat island GHG effect;
- Geology/soils impacts from building more structures and exposing more people to earthquake fault lines and other geologic/soils hazards by intensifying land use in urban areas;
- Hazards and hazardous materials impacts by locating more intense/dense housing and other sensitive uses such as schools and senior care facilities near freeways, ports, and stationary sources in urbanized areas;

- Hydrology and water quality impacts from increasing volumes and pollutant loads from stormwater runoff from higher density/intensity uses in transit-served areas as allowed by current stormwater standards;
- Noise impacts from substantial ongoing increases in construction noise from increasing density and intensity of development in existing communities and ongoing operational noise from more intensive uses of community amenities such as extended nighttime hours for parks and fields;
- Population and housing impacts from substantially increasing both the population and housing units in existing communities;
- Recreation and park impacts from increasing the population using natural preserve and open space areas as well as recreational parks;
- Transportation/traffic impacts from substantial total increases in VMT in higher density communities, increased VMT from rideshare/carshare services and future predicted VMT increases from automated vehicles, notwithstanding predicted future decrease in private car ownership;
- Traffic-gridlock related impacts and multi-modal congestion impacts including noise increases and adverse transportation safety hazards in areas of dense multi-modal activities;
- Public safety impacts due to impacts on first responders such as fire, police, and paramedic services from congested and gridlocked urban streets; and
- Public utility and public service impacts from substantial increases in population and housing/employment uses and demands on existing water, wastewater, electricity, natural gas, emergency services, libraries and schools.

238. CARB failed to complete a comprehensive CEQA evaluation of these and related reasonably foreseeable impacts from forcing all or most development into higher densities within existing urban area footprints, intentionally increasing congestions and prohibiting driving, and implementing each of the many measures described in the "Vibrant Communities" appendix. The

EA failed to identify, assess, and prescribe feasible mitigation measures for each of the significant unavoidable impacts identified above.

F. CARB's Insufficient Fiscal Analysis and Failure To Comply with the APA's Cost-Benefit Analysis Requirements

239. The APA sets out detailed requirements applicable to state agencies proposing to "adopt, amend or repeal any administrative regulation." Gov. Code § 11346.3.

240. CARB is a state agency with a statutory duty to comply with the rulemaking laws and procedures set out in the APA.

241. The APA requires that CARB, "prior to submitting a proposal to adopt, amend, or repeal a regulation to the office [of Administrative Law], shall consider the proposal's impact on business, with consideration of industries affected including the ability of California businesses to compete with businesses in other states. For purposes of evaluating the impact on the ability of California businesses to compete with businesses in other states, an agency shall consider, but not be limited to, information supplied by interested parties." Gov. Code § 11346.3(a) (2).

242. The APA further requires that "[a]n economic assessment prepared pursuant to this subdivision for a major regulation proposed on or after November 1, 2013, shall be prepared in accordance with subdivision (c), and shall be included in the initial statement of reasons as required by Section 11346.2." Gov. Code § 11346.3(a)(3).

243. CARB's new GHG Housing Measures will have an economic impact on California business enterprises and individuals in an amount exceeding fifty million dollars ($50,000,000) and therefore constitute a "major regulation" within the meaning of the APA and the California Department of Finance regulations incorporated therein. Gov. Code § 11346.3(c); 1 C.C.R. § 2000(g).

244. In adopting its 2017 Scoping Plan, CARB has failed to comply with these and other economic impact analysis requirements of the APA.

245. The 2017 Scoping Plan continues CARB's use of highly aggregated macroeconomic models that provide almost no useful information about potential costs and

impacts in industries and households. The LAO, an independent state agency, has consistently pointed out the flaws in CARB's approach since the first Scoping Plan was developed in 2008.

246. CARB's disregard of the APA's economic impact analysis requirements in issuing the 2017 Scoping Plan is only the latest example of a repeated flouting of the APA's requirements in pursuit of its pre-determined regulatory goals. The inadequacy of CARB's compliance with APA requirements has been documented in multiple LAO documents, including the following:

- In a November 17, 2008 letter to Assembly Member Roger Niello,[110] the LAO found that "ARB's economic analysis raises a number of questions relating to (1) how implementation of AB 32 was compared to doing BAU, (2) the incompleteness of the ARB analysis, (3) how specific GHG reduction measures are deemed to be cost-effective, (4) weak assumptions relating to the low-carbon fuel standard, (5) a lack of analytical rigor in the macroeconomic modeling, (6) the failure of the plan to lay out an investment pathway, and (7) the failure by ARB to use economic analysis to shape the choice of and reliance on GHG reduction measures."
- In a March 4, 2010 letter to State Senator Dave Cogdill,[111] the LAO stated that while large macroeconomic models used by CARB in updated Scoping Plan assessments can "capture some interactions among broad economic sectors, industries, consumer groupings, and labor markets," the ability of these models to "adequately capture behavioral responses of households and firms to policy changes is more limited. Additionally, because the data in such models are highly aggregated, they capture at best the behavioral responses of hypothetical "average" households and firms and do not score well in capturing and predicting the range of behavioral responses to policy changes that can occur for individual or subgroupings of households or firms. As a result, for example, the adverse jobs impacts—including job losses associated with those firms that are especially negatively impacted by the Scoping Plan—can

[110] LAO, http://www.lao.ca.gov/2008/rsrc/ab32/AB32_scoping_plan_112108.pdf.

[111] LAO, http://www.lao.ca.gov/reports/2010/rsrc/ab32_impact/ab32_impact_030410.aspx.

be hard to identify since they are obscured within the average outcome." The letter further noted multiple ways that the SP could affect jobs.

- Similarly, in a June 16, 2010 letter to Assembly Member Dan Logue,[112] the LAO found that CARB's revision to CARB's 2008 Scoping Plan analysis "still exhibits a number of significant problems and deficiencies that limit its reliability. These include shortcomings in a variety of areas including modeling techniques, identification of the relative marginal costs of different SP measures, sensitivity and scenario analyses, treatment of economic and emissions leakages, identification of the market failures used to justify the need for the regulations selected, analysis of specific individual regulations to implement certain Scoping Plan measures, and various data limitations." As a result, the LAO concluded that, contrary to CARB's statutory mandates, "The SP May Not Be Cost-Efficient." Given these and other issues, it is unclear whether the current mix and relative importance of different measures in the Scoping Plan will achieve AB 32's targeted emissions reductions in a cost-efficient manner as required."
- In a June 2017 presentation to the Joint Committee on Climate Change Policies, *Overview of California Climate Goals and Policies,*[113] and after the draft 2017 Scoping Plan had been released for public review, the LAO concluded that "To date, there have been no robust evaluations of the overall statewide effects—including on GHG reductions, costs, and co-pollutants—of most of the state's major climate policies and spending programs that have been implemented."

247. CARB's persistent failure to address the APA's economic analysis requirements, and its penchant for "jumping the gun" by taking actions without first complying with CEQA and other rulemaking requirements, also has drawn criticism from the courts.

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[112] LAO, http://www.lao.ca.gov/reports/2010/rsrc/ab32_logue_061610/ab32_logue_061610.pdf.

[113] LAO, http://lao.ca.gov/handouts/resources/2017/Overview-California-Climate-Goals-Policies-061417.pdf.

248. In *Lawson v. State Air Resources Board* (2018) 20 Cal.App.5th 77, 98, 110-116 ("*Lawson*"), the Fifth District Court of Appeal, in upholding Judge Snauffer's judgment, found both that CARB "violated CEQA by approving a project too early" and that it also violated the APA. The Court explained the economic impact assessment requirements of the APA "granularly" to provide guidance to CARB for future actions and underscored that "an agency's decision to include non-APA compliant interpretations of legal principles in its regulations will not result in additional deference to the agency", because to give weight or deference to an improperly-adopted regulation "would permit an agency to flout the APA by penalizing those who were entitled to notice and opportunity to be heard but received neither." *Id.* at 113. Despite these recent warnings, CARB has chosen to proceed without complying with CEQA or the APA.

249. CARB's use of the improper "cumulative gap" methodology to determine the GHG reductions it claims are necessary for the 2017 Scoping Plan to meet the 2030 Target means that the inputs for the CARB FA were improper. The FA, which is supposed to inform policymakers and the public about the cost-effectiveness and equity of the Scoping Plan measures, is based on meeting the 621 $MMTCO_2e$ GHG "cumulative gap" reduction requirement invented by CARB.

250. In fact, the final FA adopted by CARB indicates that an earlier version was based on the asserted "need" to fill an even larger "cumulative gap" of 680 $MMTCO_2e$. This improper analysis renders the FA and the cost analysis required under the APA invalid.

G. The Blatantly Discriminatory Impacts of CARB's 2017 Scoping Plan

251. CARB has recognized that "[i]t is critical that communities of color, low-income communities, or both, receive the benefits of the cleaner economy growing in California, including its environmental and economic benefits." Scoping Plan, p. 15.

252. The GWSA specifically provides, at H&S Code § 38565, that: "The state board shall ensure that the greenhouse gas emission reduction rules, regulations, programs, mechanisms, and incentives under its jurisdiction, where applicable and to the extent feasible, direct public and private investment toward the most disadvantaged communities in California and provide an opportunity for small businesses, schools, affordable housing associations, and other community

institutions to participate in and benefit from statewide efforts to reduce greenhouse gas emissions."

253. CARB's standards, rules, and regulations also must, by statute, be consistent with the state goal of providing a decent home and suitable living environment for every Californian. H&S Code § 39601(c). This includes affordable housing near jobs for hard working, low-income minority families.

254. California produces less than one percent of global GHG emissions, and has lower per capita GHG emissions than any other large state except New York, which unlike California still has multiple operating nuclear power plants to reduce its GHG emissions.[114]

255. As Governor Brown and many others have recognized, California's climate change leadership depends not on further mass reductions of the one percent of global GHG emissions generated within California, but instead on having other states and nations persuaded to follow the example already set by California.

256. In any event, as recently demonstrated in a joint study completed by scholars from the University of California at Berkeley and regulators at the Bay Area Air Quality Management District ("BAAQMD")[115], high wealth households cause far more global GHG emissions than middle-class and poor households. The Scoping Plan ignores this undisputed scientific fact and unfairly, and unlawfully, seeks to burden California's minority and middle-class households in need of affordable housing with new regulatory costs and burdens that do not affect existing, wealthier homeowners who "already have theirs".

257. California has the nation's highest poverty rate, highest housing prices, greatest housing shortage, highest homeless population—and highest number of billionaires.[116] While it is

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[114] U.S. Energy Information Agency, State Carbon Dioxide Emissions Data, October 2017, https://www.eia.gov/environment/emissions/state/.

[115] BAAQMD and Cool Climate Network at UC Berkeley, Consumption Based GHG Emissions Inventory (2016), http://www.baaqmd.gov/research-and-data/emission-inventory/consumption-based-ghg-emissions-inventory.

[116] David Friedman, Jennifer Hernandez, California's Social Priorities, Holland & Knight, Chapman University Press (2015), https://perma.cc/XKB7-4YK4; Liana Fox, The Supplemental Poverty Measure: 2016, U.S. Census Bureau Report Number: P60-261, Table A-5 (Sept. 21, 2017), https://www.census.gov/library/publications/2017/demo/p60-261.html.

not the function of the courts to address economic inequalities, the federal and state Constitutions prohibit the State from enacting regulatory provisions that have the inevitable effect of unnecessarily and disproportionately disadvantaging minority groups by depriving them of access to affordable housing that would be available in greater quantity but for CARB's new GHG Housing Measures.

258. Members of hard working minority families, in contrast to wealthier white elites, currently are forced to "drive until they qualify" for housing they can afford to own, or even rent.[117] As a result, long-commute minority workers and their families then suffer a cascading series of adverse health, educational and financial consequences.[118]

259. It is well-documented and undisputed, in the record that the current housing shortage—which CARB's regulations would unnecessarily exacerbate—falls disproportionately on minorities. As stated in a United Way Study, "Struggling to Get By: The Real Cost Measure in California 2015"[119]: "Households led by people of color, particularly Latinos, disproportionately are likely to have inadequate incomes. Half (51%) of Latino households have incomes below the Real Cost Measure,[120] the highest among all racial groups. Two in five (40%) of African American households have insufficient incomes, followed by other races/ethnicities (35%), Asian Americans (28%) and white households (20%)." Put simply, approximately 80% of the poorest households in the State are non-white families.

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[117] Mike McPhate, *California Today: The Rise of the Super Commuter*, N.Y. Times (Aug. 21, 2017), https://www.nytimes.com/2017/08/21/us/california-today-super-commutes-stockon.html; Conor Dougherty, Andrew Burton, *A 2:15 Alarm, 2 Trains and a Bus Get Her to Work by 7 A.M.*, N.Y. Times (Aug. 17, 2017), https://www.nytimes.com/2017/08/17/business/economy/san-francisco-commute.html.

[118] Rebecca Smith, Here's the impact long commutes have on your health and productivity, *Business Insider* (May 22, 2017), http://www.businessinsider.com/long-commutes-have-an-impact-on-health-and-productivity-2017-5.

[119] Betsy Block et al, Struggling to Get By: The Real Cost Measure in California 2015 (2016), p. 10, https://www.norcalunitedway.org/sites/norcalunitedway.org/files/Struggling_to_Get_By_3.pdf.

[120] The United Way study uses the "Real Cost Measure" to take account of a family budget to meet basic needs, composed of "costs all families must address such as food, housing, transportation, child care, out-of-pocket health expenses, and taxes." *Id.*, p. 8.

260. As noted in the same report: "Housing costs can consume almost all of a struggling household's income. According to Census Bureau data, housing (rent, mortgage, gas/electric) makes up 41% of household expenses in California. . . . Households living above the Federal Poverty Level but below the Real Cost Measure spend almost half of their income on rent (and more in many areas), and households below the Federal Poverty Level, however, report spending 80% of their income on housing, a staggering amount that leaves precious little room for food, clothing and other basics of life." *Id.*, p. 65.[121]

261. As further documented in the United Way report presented to CARB: "Recognizing that households of all kinds throughout the state are struggling should not obscure one basic fact: race matters. Throughout Struggling to Get By, we observe that people of Latino or African American backgrounds (and to a lesser extent Asian American ones) are less likely to meet the Real Cost Measure than are white households, even when the families compared share levels of education, employment backgrounds, or family structures. While all families face challenges in making ends meet, these numbers indicate that families of color face more obstacles in attempting to achieve economic security."[122]

262. Against this background, CARB's new GHG Housing Measures, which disproportionately harm housing-deprived minorities while not materially advancing the cause of GHG reductions, cannot be justified. CARB's new GHG Housing Measures, facially and as applied to the housing sector in particular, are not supported by sound scientific analysis and are in fact counterproductive. CARB's new GHG Housing Measures establish presumptive legal standards under CEQA that currently impose, as a matter of law, costly new mitigation obligations that apply only to housing projects proposed now and in the future to meet

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[121] In addition, family wealth of homeowners has increased in relation to family wealth of renters over time and a homeowners' net worth is 36 times greater than a renters' net worth. Jesse Bricker, et al., Changes in US Family Finances from 2010 to 2013: Evidence from the Survey of Consumer Finances, 100 Fed. Reg. Bull. 4 (Sept. 2014), https://www.federalreserve.gov/pubs/bulletin/2014/articles/scf/scf.htm.

[122] *Id.* p. 75. Studies predict that the 2014-2016 dataset will show a wealth differential between homeowners and renters of 45 times. Lawrence Yun, *How Do Homeowners Accumulate Weath?*, Forbes (Oct. 14, 2015), https://www.forbes.com/sites/lawrenceyun/2015/10/14/how-do-homeowners-accumulate-wealth/#7eabbecd1e4b.

California's current shortfall of more than three million homes that experts and the Governor-elect agree are needed to meet current housing needs. Two specific examples are provided below.

263. By establishing a new "net zero" GHG CEQA significance threshold for all new projects, CARB has created a new legal obligation for such new projects to "mitigate" to a "less than significant" level all such GHG impacts. The California Air Pollution Control Officers Association ("CAPCOA"), which consists of the top executives of all of the local and regional air districts in California, has developed a well-established model for calculating GHG emissions from such new projects called The California Emissions Estimator Model ("CalEEMod").[123] This model is in widespread use throughout the state, and has been determined by the California Supreme Court to be a valid basis for estimating GHG emissions from residential projects for purposes of CEQA. *Newhall*, supra, 62 Cal.4th at 217-218.

264. CalEEMod calculates GHG emissions for 63 different types of development projects, including multiple types of residential projects. The scientific and legal framework of CalEEMod is the foundational assumption that all GHG project emissions are "new" and would not occur if the proposed project was not approved or built.

265. Within this overall framework, CalEEMod identifies GHG emissions that occur during construction (e.g., from construction vehicles and construction worker vehicular trips to and from the project site), and during ongoing project occupancy by new residents. GHG occupancy or "operational" emissions include GHG emissions from offsite electricity produced to serve the project, from onsite emissions of GHG from natural gas appliances, from on- and off-site GHG emissions associated with providing drinking water and sewage treatment services to the project, from vegetation removal and planting, and from vehicular use by project occupants on an ongoing basis. *See, e.g.*, Appendix A of CalEEMod[124]; South Coast Air Quality Management District User's Guide to CalEEMod[125].

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[123] Available at: http://www.caleemod.com/.

[124] CalEEMod Appendix A: Calculation Details for CalEEMOd, available at: http://www.aqmd.gov/docs/default-source/caleemod/caleemod-appendixa.pdf.

[125] CalEEMod User's Guide, available at: http://www.aqmd.gov/docs/default-source/caleemod/01_user-39-s-guide2016-3-2_15november2017.pdf?sfvrsn=4.

266. Under the CalEEMod CEQA compliance framework, if the project does not occur then the GHG emissions do not occur—notwithstanding the practical and obvious fact that people who cannot live in new housing they can afford must still live somewhere, where they will still engage in basic activities like consuming electricity, drinking water, and driving cars.

267. Under CEQA, a "significant" environmental impact is required to be "mitigated" by measures that avoid or reduce the significance of that impact by all "feasible" means. Pub. Res. Code § 21102. The CEQA Guidelines define "feasible" as "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal , social and technological factors." 14 C.C.R. § 15364.

268. The first of two examples of immediate and ongoing harm relates to the increased cost of housing caused by the "net zero" threshold. Before the 2017 Scoping Plan was approved, no agency or court had ever required a "net zero" GHG threshold. The only example of a residential project that met this target involved a voluntary commitment by the project applicant to a "net zero" project, in which 49% of the project's GHG emissions were "offset" by GHG reductions to be achieved elsewhere (e.g., funding the purchase of cleaner cook stoves in Africa) and paid for by higher project costs.

269. There is no dispute that funding these types of GHG reduction measures somewhere on Earth is "feasible" taking into account three of CEQA's five "feasibility" factors (environmental, social and technological). With housing costs already nearly three times higher in California than other states, home ownership rates far lower, and housing-induced poverty rates the highest in the nation, it remains possible – in theory – to demonstrate that in the context of a given housing project, adding $15,000-$30,000 more to the price of a home to fund the purchase of cleaner cook stoves in Africa, for example, would not be "legally" or "economically" feasible.

270. This theoretical possibility of demonstrating that any particular mitigation cost results in "economic infeasibility" has not succeeded, however, for any housing project in the nearly-50 year history of CEQA. A lead agency decision that a mitigation measure is infeasible must be supported by substantial evidence in the record—effectively the burden is placed on the project applicant to prove this latest "net zero" increment of mitigation costs is simply too

expensive and will make the project "infeasible." No court has found that a housing project has met this burden. *See, e.g.*, *Uphold our Heritage v. Town of Woodside* (2007) 147 Cal.App.4th 587. Further, this infeasibility evaluation applies to the applicant for the housing project, not prospective future residents—simply raising housing prices affordable only to wealthier buyers.

271. The CEQA mitigation criterion of legal infeasibility is likewise illusory when applied to the GHG mitigation measures required to achieve a "net zero" significance threshold. Although there is some judicial precedent recognizing that lead agencies cannot impose CEQA mitigation obligations outside their jurisdictional boundaries (e.g, in adjacent local jurisdictions), this precedent—like OPR's definitive regulatory conclusion that CEQA cannot be used to impose a "net zero" threshold even and specifically within the context of GHG—is directly challenged by the 2017 Scoping Plan, which cited with approval the one "net zero" GHG residential project that relied in part on offsite (off-continent) GHG reduction measures.

272. This "legal infeasibility" burden of proof also is extremely high under CEQA. For example, the California Supreme Court considered in *City of San Diego, et al. v. Board of Trustees of California State University* (2015) 61 Cal.4th 945, the University's "economic infeasibility" argument in relation to making very substantial transfer payments to local government to help fund local highway and transit infrastructure, which would be used in part by the growing student, faculty and staff for the San Diego campus. Although the Court acknowledged that the Trustees had expressly requested, and been denied, funding by the Legislature to help pay for these local transportation projects, the Court did not agree this was adequate to establish economic infeasibility under CEQA since the Trustees could have sought alumni donations or funding from other sources, or elected to stop accommodating new students in San Diego and instead grown other campuses with potentially lower costs. When CARB's "net zero" GHG measures are coupled with the "legal infeasibility" burden of proof, the result is a legal morass that frustrates the efforts of local governments to implement the Legislature's pro-housing laws and policies, to the detriment of under-housed minorities, including Petitioners.

273. The second example of immediate and ongoing harm is CARB's direct intervention in projects already in CEQA litigation by opining on the acceptable CEQA

mitigation for GHG emissions from fuel use, which typically create the majority of GHG emissions from new housing projects. In a long series of evolving regulations including most recently the 2018 adoption of new residential Building Code standards[126], and in compliance with the consumer protection and cost-effectiveness standards required for imposing new residential Building Code requirements established by the Legislature (Pub. Resources Code §§ 25402(b)(3), (c)(1); 25943(c)(5)(B)), California law requires new residences to be better insulated, use less electricity, install the most efficient appliances, use far less water (especially for outdoor irrigation), generate electricity (from rooftop solar or an acceptable alternative), and transition to future electric vehicles. These and similar measures have substantially reduced the GHG emissions from ongoing occupancy of new housing.

274. Under the CalEEMod methodology, however, gasoline and hybrid cars used by new residents are also counted as "new" GHG emissions attributed to that housing project – and these vehicular GHG emissions now account for the vast majority of a typical housing project's GHG emissions.[127]

275. In 2017, the Legislature expanded its landmark "Cap and Trade" program establishing a comprehensive approach for transitioning from fossil fuels to electric or other zero GHG emission technologies, which already includes a "wells to wheels" program for taxing oil and natural gas extraction, refinement, and ultimate consumer use.[128] CARB has explained that the Cap and Trade Program requires fuel suppliers to reduce GHG emissions by supplying low

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[126] See California Building Standards Commission, 2018 Triennial Code Adoption Cycle, available at: http://www.bsc.ca.gov/Rulemaking/adoptcycle/2018TriennialCodeAdoptionCycle.aspx. *See also* California Energy Code, California Code of Regulations, Title 24, Part 6; Building Energy Efficiency Standards (2019 update).

[127] In the Northlake project challenged in a comment letter citing noncompliance with the 2017 Scoping Plan discussed *supra* ¶ 42, for example, total project GHG emissions after mitigation were 56,722 metric tons, of which mobile sources from vehicles comprised 53,863 metric tons. Los Angeles County, Draft Supplemental EIR (May 2017), Table 5.7-3 (p. 5.7-26), available at https://scvhistory.com/scvhistory/files/northlakehills_deir_0517/northlakehills_deir_0517.pdf

[128] A.B. 398, 2017 (California Global Warming Solutions Act of 2006: market-based compliance mechanisms: fire prevention fees: sales and use tax manufacturing exemption).

carbon fuels or purchasing allowances to cover the GHG emissions produced when the conventional petroleum-based fuels they supply are burned.

276. Specifically, as part of the formal rulemaking process for the Cap and Trade Legislation, CARB staff explained in its *Initial Statement of Reasons for the Proposed Regulation to Implement the California Cap and Trade Program*, that:

> To cover the emissions from transportation fuel combustion and that of other fuels by residential, commercial, and small industrial sources, staff proposes to regulate fuel suppliers based on the quantifies of fuel consumed by their customers. … Fuel suppliers are responsible for the emissions resulting from the fuel they supply. In this way, a fuel supplier is acting on behalf of its customers who are emitting the GHGs … Suppliers of transportation fuels will have a compliance obligation for the combustion of emissions from fuel that they sell, distribute, or otherwise transfer for consumption in California. … [B]ecause transportation fuels and use of natural gas by residential and commercial users is a significant portion of California's overall GHG emissions, ***the emissions from these sources are covered indirectly through the inclusion of fuel distributers [in the Cap and Trade program]***."(emphasis added).[129]

277. CARB's express recognition of the fact that the Cap and Trade program "covers" emissions from the consumption of fossil fuels in the Cap and Trade regulatory approval process, in marked contrast with the challenged Housing Measures in the 2017 Scoping Plan, was subject to its own comprehensive environmental and economic analysis – which in no way disclosed, analyzed, or assessed the impacts of forcing residents of new housing to pay for GHG emission reductions from their fossil fuel uses at the pump (and in electricity bills) like their already-housed neighbors, and then paying *again – double-paying* – in the form extra GHG mitigation measures for the *same emissions*, resulting in higher housing costs.

278. The 2017 Scoping Plan likewise entirely omitted any analysis of the double-charging of residents of new homes for GHG emissions from the three million new homes the state needs to build to solve the housing crisis. Simply put, CARB should not now be permitted to use what purports to be only an "advisory" 2017 Scoping Plan to disavow and undermine its

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[129] CARB. October 2011. California's Cap-And-Trade Program Final Statement of Reasons, p. 2: https://www.arb.ca.gov/regact/2010/capandtrade10/fsor.pdf; (incorporating by reference CARB. October 28, 2010. Staff Report: *Initial Statement of Reasons for the Proposed Regulation to Implement the California Cap-and-Trade Program Part 1, Vol. 1,* pp. II-10, II-20, II-21, 11-53: https://www.arb.ca.gov/regact/2010/capandtrade10/capisor.pdf)

formal rulemaking statement for the Cap and Trade regulations, nor can CARB use this asserted "advisory" document to invent the new CEQA GHG mitigation mandates (and preclude use of Cap and Trade as CEQA mitigation) without going through a new regulatory process to amend its Cap and Trade program.

279. Whether compliance with Cap and Trade for fossil fuels used to generate electricity or power cars used by a particular project is an adequate mitigation measure for GHG under CEQA has been hotly contested in past and pending CEQA lawsuits. In *Newhall*, *supra*, 62 Cal.4th 204, one of the approved GHG compliance pathways for CEQA identified by the Court was compliance with applicable laws and regulations. That case was extensively briefed by numerous advocates (*see* Opening Brief on the Merits, *Center for Biological Diversity v. California Department of Fish and Game* (2015) 62 Cal.4th 204 (No. 5-S217763), and Consolidated Reply Brief, *Center for Biological Diversity v. California Department of Fish and Game*, (2015) 62 Cal.4th 204 (No. 9-S217763), which urged the Court to conclude as a matter of law that CEQA requires "additive" mitigation beyond what is otherwise required to comply with applicable environmental, health and safety laws.

280. Neither the appellate courts nor Supreme Court have imposed this novel interpretation of the GHG mandates imposed by CEQA as a newly discovered legal requirement lurking within this 1970 statute. As noted above, the Supreme Court declined to do so by expressly recognizing that compliance with law was one of several compliance "pathways" for addressing GHG impacts under CEQA. (*Newhall, supra,* 62 Cal.4th at 229). (*See also, Center for Biological Diversity et al. v. Department of Fish and Game* (2014) 224 Cal.App.4th 1105.)[130]

281. Consistent with this Supreme Court directive, and informed by both the Legislative history of the Cap and Trade program and by CARB's contemporaneous explanation that compliance with Cap and Trade is indeed the sole GHG mitigation required for fossil fuel use, several projects have mitigated GHG emissions from fossil fuel by relying on the legislated,

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[130] This appellate court decision, which was reversed and remanded by the Supreme Court decision in the same case, is cited as evidence for the proposition that what constitutes adequate mitigation for GHG impacts under CEQA has been hotly contested in the courts.

and regulated, Cap and Trade program and similar legislative as well as regulatory mandates to reduce GHG emissions from fossil fuel. This has been accomplished through measures such as the Low Carbon Fuel Standards, which collectively and comprehensively mandate prescribed reductions in GHG emissions from fossil fuel use.

282. This approach has been expressly upheld by the Fifth District Court of Appeal in *Association of Irritated Residents v. Kern County Bd. of Supervisors* (2017) 17 Cal.App.5th 708 ("*AIR*"). Although the project at issue was a refinery source that was itself clearly included within the category of industrial operations directly regulated by the Cap and Trade Program, opponents challenged that project's reliance on the Cap and Trade program for non-refining GHG emissions such as GHG emissions produced offsite by the electricity producers that provided power to the consumer power grid, and by vehicles used by contractors and employees engaged in refinery construction and operational activities. *See, e.g.*, Appellants' Opening Brief, *AIR*, *5th Dist. Case No. F073892 (December 9, 2016) at 29 (arguing that "[c]ap-and-trade does not apply to greenhouse gas emissions from trains, trucks, and building construction . . . .") and at 34-35 (arguing that participation in the cap and trade program is inadequate mitigation for project emissions). The CEQA lead agency and respondent project applicant argued that reliance on Cap and Trade as CEQA mitigation was lawful and sufficient under CEQA. *See* Joint Respondents' Brief, *AIR*, 5th Dist. Case No. F073892 (March 10, 2017), at 52-56 (arguing that "The EIR Properly Incorporated GHG Emission Reductions Resulting From Cap-and-Trade In The Environmental Analysis").

283. The Fifth District concluded that compliance with the Cap and Trade program for the challenged project were adequate CEQA GHG mitigation. That case was then unsuccessfully challenged, and unsuccessfully petitioned for depublication, by numerous advocates that continued to assert that CEQA imposes an "additive" GHG mitigation obligation that could not be met by paying the higher fuel costs imposed by the Cap and Trade program.[131]

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[131] *See* Letter from CARB to City of Moreno Valley regarding Final Environmental Impact Report for World Logistics Center, available at: https://www.arb.ca.gov/toxics/ttdceqalist/logisticsfeir.pdf.

284. California already has the highest gasoline prices of any state other than Hawaii. CARB has consistently declined to disclose how much gasoline and diesel prices would increase under the 2017 Cap and Trade legislation. The non-partisan LAO completed an independent analysis of this question, and in 2017 concluded that under some scenarios, gasoline would increase by about 15¢ per gallon – and in others by about 73¢ per gallon. The LAO also noted that these estimated increases in gasoline prices "are an intentional design feature of the program."[132]

285. By using CEQA mitigation mandates created by the Scoping Plan to require only the disproportionately minority occupants of critically needed future housing to double-pay (both at the pump and in the form of higher housing costs imposed as a result of CEQA mitigation for the same fuel consumption), CARB has established a disparate new financial burden that is entirely avoided by those generally whiter, wealthier, and older Californians who have the good fortune of already occupying a home.

286. Both CARB and the Attorney General have acted in bad faith, and unlawfully, in their public description of and subsequent conduct regarding the immediate effectiveness and enforcement of the 2017 Scoping Plan.

287. First, in a written staff report distributed at the December 17, 2017 hearing at which the CARB Board approved the Scoping Plan, CARB staff misled the public and its Board by pretending that the challenged Housing Measures are simply not part of the Scoping Plan at all, and thus need not be considered as part of the environmental or economic study CARB was required to complete as part of the Scoping Plan approval process. This assertion flatly contradicted an earlier description of the immediately-implementing status of these Housing Measures made in a public presentation by a senior CARB executive.

288. Next, the Attorney General repeatedly advised this Court that the challenged Housing Measures were merely "advisory" and explained "the expectation that new measures proposed in the [Scoping] plan would be implemented through subsequent legislation or

[132] LAO, https://lao.ca.gov/letters/2017/fong-fuels-cap-and-trade.pdf.

regulations." (Memorandum of Points and Authorities in Support of Demurrer to Plaintiff's Verified Petition for Writ of Mandate, Case No. 18-CECG-01494 (August 31, 2018), p. 8:18-19 ("AG Memo")). The AG Memo argued that the disparate harms caused by such measures are not ripe because such subsequent implementing legislative or regulatory actions "have yet to be taken" (Reply Memorandum in Support of Defendants California Air Resources Board and Richard Corey's Demurrer to Plaintiffs' Verified Petition for Writ of Mandate *etc.*, Case No. 18-CECG-01494(October 16, 2018), p. 2:6-7 ("AG Reply Memo"), and that Petitioners' assertions that the challenged Housing Measures would result in litigation disputes aimed at stopping or increasing the cost of housing was "wildly speculative" (AG Memo, p. 10:7). Further the Attorney General argued that the 2017 Scoping Plan "cannot be reasonably viewed as providing a valid basis for filing suit under CEQA." (AG Memo, p. 14:15) The same arguments were advanced in this Court's hearing on October 26, 2018.

289. Meanwhile, however, and virtually simultaneously with making contrary assertions to this Court, both the Attorney General and CARB were filing comment letters (precedent to CEQA lawsuits), and the Attorney General filed an amicus brief in a CEQA lawsuit, to challenge the legality of a CEQA lead agency's mitigation measure (in one case) and proposed General Plan element approval (in another case) *based on alleged failure to comply with applicable Housing Measures in the Scoping Plan.*

290. CARB's (and the Attorney General's) claims that the 2017 Scoping Plan is merely "advisory" and that its future effects are merely "speculative" (as well as its express denial at the December 2017 hearing on the 2017 Scoping Plan that the four challenged GHG Housing Measures are even part of the Plan), have been belied by the actual use of the 2017 Scoping Plan by CARB and the Attorney General themselves, as well as by third party agencies and anti-housing project CEQA litigants. Among the recent examples of the use of the Scoping Plan are the following:

A. **CARB September 7, 2018 Comment Letter:** Before even completing its Demurrer briefing to this Court, on September 7, 2018, CARB filed a comment letter criticizing the revised Final Environmental Impact Report for the World

Logistics Center project. A copy of this letter can be found at https://www.arb.ca.gov/toxics/ttdceqalist/logisticsfeir.pdf. CARB's comment letter opines that as an absolute and unambiguous matter of law, compliance with the Cap and Trade program is not a permissible mitigation under CEQA. CARB's comment dismisses as "novel" the contention that compliance with laws and regulations requiring reductions in GHG can be, and is in fact, a permissible and legally sufficient mitigation measure under CEQA. Strikingly, CARB's letter simply ignores the *Newhall* decision. As for the Fifth District's on-point decision in *AIR*, CARB's letter states (at p. 11, note 23) that, "*[i]n CARB's view this case was wrongly decided as to the Cap-and-Trade issue . . .*" Thus, CARB in its public comments is urging permitting agencies to *disregard* court decisions on GHG issues and instead to follow CARB's supposedly "advisory" Scoping Plan policies, which it cites extensively . This type of CEQA "expert agency" letter can be used by the agency itself, if it chooses to file a lawsuit against an agency approving a project in alleged noncompliance with CEQA, or it can be used for its evidentiary value (and expert agency opinions are presumptively entitled to greater deference) by any other third party filing a CEQA lawsuit against that project, or even in another lawsuit raising similar issues provided that the CARB comment letter is submitted in the agency proceeding that is targeted by such second and subsequent lawsuits.

B. **Attorney General's September 7, 2018 Comment Letter:** Also on September 7, 2018, the Attorney General ("AG") joined CARB in criticizing the World Logistics Project's GHG analysis in a comment letter that prominently featured the 2017 Scoping Plan. A copy of this letter can be found at https://oag.ca.gov/sites/all/files/agweb/pdfs/environment/comments-revised-sections-feir.pdf. Like CARB, the AG relied on the Scoping Plan to measure the adequacy of GHG measures under CEQA. Also like CARB, the AG sought to sidestep the Fifth District's *AIR* decision, but did so "[w]ithout commenting on

whether or not that case was rightly decided" in the AG's opinion (p. 6). The Attorney General's comment letter relies on the 2017 Scoping Plan in opining that "CEQA requires" the CEQA lead agency to "evaluate the consistency of the Project's substantial increases in GHG emissions with state and regional plans and policies calling for a dramatic reduction in GHG emissions" The AG goes on to conclude that the lead agency engaged in a "failure to properly mitigate" impacts as required by CEQA because the project's "increase in GHG emissions conflicts with the downward trajectory for GHG emissions necessary to achieve state climate goals." The AG again cites the 2017 Scoping Plan text in explaining that, unless they mandate CEQA GHG mitigation measures that go beyond compliance with applicable GHG reduction laws and regulations, "local governments would . . . not be doing their part to help the State reach its ambitious, yet necessary, climate goals." [AG letter at p. 7-11]

C. **Attorney General's November 8, 2018 Amicus Filing:** A third example is provided by the AG's November 8, 2018 filing of an "Ex Parte Application of People of the State of California for Leave to File Amicus Curiae Brief in Support of Petitioners" in *Sierra Club, et al. v. County of San Diego* (Nov. 8, 2018) No. 37-2018-00014081-CU-TT-CTL (San Diego Superior Court). A true copy of this Ex Parte Application and accompanying AG memorandum is attached hereto as **Exhibit 1**. A copy of the underlying Sierra Club petition, into which the AG has sought to inject the Scoping Plan, is attached hereto as **Exhibit 2**. In the amicus filing (Exhibit 1), the Attorney General asserts that he "has a special role in ensuring compliance with CEQA", and that he "has actively participated in CEQA matters raising issues of greenhouse gas ("GHG") emissions and climate change." (Application at 3:16, 24-25.) The challenged San Diego County Climate Action Plan actually includes and requires implementation of the 2017 Scoping Plan's "recommended" Net Zero GHG CEQA threshold for new projects, but was nevertheless challenged in this lawsuit the grounds that it did not also mandate a

reduction in Vehicle Miles Traveled because it allowed the County to approve new housing projects that fully mitigated ("Net Zero GHG") all GHG emissions but still resulted in an increase in VMT from residents living in this critically needed new housing. Petitioners in the consolidated proceedings in this case have claimed that based on the state's climate laws including the 2017 Scoping Plan, the County could not lawfully approve any amendment to its General Plan to accommodate any of the state's three million home shortfall unless such housing was higher density (e.g., apartments) and located inside or immediately adjacent to existing urban areas served by transit, because only that type of housing and location could result in the required reduction in VMT. Petitioners in these cases further identified the pending housing projects they believed could not be approved by the County. Petitioners sought (and obtained) injunctive relief to prevent such housing projects from relying on this "Net Zero" GHG Climate Action Plan as allowed by one of the CEQA compliance pathways identified by the Supreme Court in its *Newhall* decision, and identified by the Legislature itself in CEQA compliance provisions set forth in SB 375. In his amicus brief, the Attorney General repeatedly cites CARB's 2017 Scoping Plan as the legal basis for a new mandate that allegedly prohibits San Diego County (and all other counties) from meeting any part of the housing shortfall with more traditional homes (e.g., small "starter" homes and duplexes, which cost less than a third to build than higher density apartment units), or from locating these new homes anywhere other than an existing developed city or unincorporated community. The Attorney General also falsely argues that VMT reductions are mandated by other state laws; however, no law enacted by the California Legislature mandates any VMT reduction, and the Legislature has repeatedly rejected enacting such a mandate.[133]

[133] The Attorney General further argues that VMT reductions are required by SB 375, which is designed to reduce GHG (not VMT) with land use and transportation plans, even though SB 375 specifically directs CARB to develop compliance metrics and CARB has

291. CARB cannot have it both ways: it cannot coyly claim that the 2017 Scoping Plan is merely "advisory" and then fire into the end of a second round of CEQA documentation for a single project a new legal conclusion that upends the published judicial precedents of our courts. The AG similarly cannot assure this Court that it is "wildly speculative" for a CEQA lawsuit to be filed in reliance on the challenged measures in the 2017 Scoping Plan, and then six days later file an amicus in a CEQA lawsuit that does just that. If CARB wants to change Cap and Trade laws and regulations, and other GHG reduction laws and regulations applicable to fossil fuels, to make those not already fortunate enough to have housing pay both at the pump, and in their down-payment/mortgage and rent check, for "additive" GHG reductions above and beyond what their more fortunate, generally whiter, wealthier and older well-housed residents have to pay, then that is first and foremost a new mandate that can only be imposed by the Legislature given direct court precedent on this issue.

292. If such a mandate were proposed by the Legislature, a full and transparent debate about the disparate harms such a proposal would confirm that those most affected by the housing crisis, including disproportionately our minority communities, would suffer the equivalent of yet another gasoline tax on those least able to pay, and most in need of new housing. Petitioners are confident that the Legislature would not approve such a proposal.

293. Even these few examples of direct CARB and Attorney General implementation actions of the 2017 Scoping Plan to require more mitigation or block new housing demonstrate the immediate and ongoing harm of the 2017 Scoping Plan's challenged Housing Measures, which CARB and the Attorney General have opined impose higher CEQA "mitigation" costs on housing under a "net zero" GHG mitigation framework, and block otherwise lawful new housing altogether under the Scoping Plan's "VMT reduction" framework. The harms caused by these Housing Measures is not "wildly speculative"— they are already underway. They already disproportionately affect California minority communities not already blessed with wealth and

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itself repeatedly declined to require VMT reduction compliance metrics under SB 37 as late as December of 2017 and March of 2018.

homeownership, and they are already the subject of both administrative and judicial proceedings. They are properly and timely before this Court. The following paragraphs provide additional evidence of ripeness in the context of the three other challenged Housing Measures, beyond the "Net Zero" GHG threshold and corresponding mitigation mandates described above.

294. The 2017 Scoping Plan's new numeric thresholds for local climate action plans present similarly immediate and ongoing harms to Petitioner/Plaintiffs. In its *Newhall* decision, the California Supreme Court concluded that one of the "pathways" for CEQA compliance was designing projects that complied with a local Climate Action Plan ("CAP") having the then-applicable GHG statutory reduction mandate of reducing GHG emissions to 1990 levels by 2020.

295. Housing projects that complied with a local CAP had been duly approved by the same local governments responsible for planning and approving adequate housing for our minority communities. This provided a judicially streamlined pathway for GHG CEQA compliance for housing. Local CAPs include community-scale GHG reduction strategies such as pedestrian, bicycle and transit improvements that are beyond the ability of any single housing project to invent or fully fund, and thus CAP compliance is a known and legally-defensible CEQA GHG compliance pathway. The Scoping Plan destroyed that pathway, and accordingly caused and is causing immediate harm to new housing projects that could otherwise rely on the CAP compliance pathway for CEQA.

296. There is no statutory obligation for a city or county to adopt a CAP, nor are there any regulations prescribing the required contents of a CAP; instead, a CAP's primary legal relevance to proposed new housing projects occurs within the CEQA compliance context.

297. There has been a flurry of unresolved and ongoing CEQA interpretative issues with respect to CAPs that have been and remain pending in courtrooms throughout California. For example, in the City of San Diego and the County of Sonoma, multi-year lawsuits have resulted in two judicial decisions that make clear that any jurisdiction electing to voluntarily approve a CAP must assure that the CAP has clear, adequate and enforceable measures to achieve the GHG reduction metric included in the CAP. *See Sierra Club v. County of San Diego* (2014) 231 Cal.App.4th 1152; *California Riverwatch v. County of Sonoma* (July 20, 2017) Case No.

SCV-259242 (Superior Court for the County of Sonoma)[134]; *see also Mission Bay Alliance, et. al. v. Office of Community Investment and Infrastructure, et. al.* (2016) 6 Cal.App.5th 160 (upholding the adequacy of a CAP as CEQA compliance for a new professional sports facility).

298. The new numeric GHG per capita metric that the 2017 Scoping Plan prescribes as the presumptively correct GHG reduction target for CAPs places the entire burden of achieving the state's legislated 40% reduction target by 2030, and the unlegislated 80% reduction target by 2050, on local governments, with for example a numeric GHG reduction target of 2 tons per person per year by 2050. However, as the 2017 Scoping Plan itself makes clear, the vast majority of GHG emissions derive from electric power generation, transportation, manufacturing, and other sectors governed by legal standards, technologies, and economic drivers that fall well beyond the land use jurisdiction and control of any local government. The Scoping Plan does not even quantify the GHG reductions to be achieved by local governments, in their voluntary caps or otherwise: it seeks to define and achieve the state's GHG reduction mandates with measures aimed at specific GHG emission sectors.

299. The 2018 San Diego County CAP, adopted after the County lost its first CEQA lawsuit, adopts both CARB's numeric GHG targets—and the mandate that new housing projects entirely absorb the additional cost of fully offsetting GHG emissions in compliance with the "net zero" standard by paying money to fund GHG reduction projects somewhere on earth. The San Diego CAP both proves the immediacy of the disparate mitigation cost harms of the Scoping Plan's imposition of even higher costs to housing critically needed by California's minority communities, and provides a case study in the anti-housing legal morass created by the 2017 Scoping Plan's ambiguous—and unexamined from an equity, environmental, economic disclosure or public review process—new CEQA "net zero" threshold and CAP per capita numeric standards.

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[134] The trial court order in *California Riverwatch v. County of Sonoma* is cited herein as evidence for the existence of CEQA litigation challenges to local climate action plans and not as legal precedent. The order is available at: http://transitionsonomavalley.org/wp-content/uploads/2017/07/Order-Granting-Writ-7-20-17.pdf.

300. San Diego County faces its third round of CAP litigation (with the prior two rounds still ongoing in various stages of judicial remand and review) in a lawsuit filed in 2018, in which the same group of petitioners allege that the County again failed to include sufficient mandatory measures to achieve the 2017 Scoping Plan per capita GHG reduction metric because it continued to allow new housing to be built if offsetting GHG reductions were funded by the housing project in or outside the County. A copy of one such lawsuit (consolidated with others) is attached for reference as Exhibit 2. This lawsuit seeks a blanket, County-wide writ of mandate that would block "processing of permits for development projects on unincorporated County lands" unless these new housing-blocking measures are included. (See Exhibit 2 at p. 17:3-7.) The petitioners in these consolidated cases against San Diego County have further made clear that their ongoing objections to the County's CAP were so severe that they had also been compelled to file CEQA lawsuits *against individual housing projects*, and in their lawsuit, they have included a list of nearly a dozen pending housing projects that in their judgment should not be allowed to proceed. As described above, the Attorney General filed a request for leave to file an amicus brief in this case, accompanied by an amicus brief. See Exhibit 1. Based on CARB's 2017 Scoping Plan, the AG has sought to bolster to the petitioners' anti-housing CEQA lawsuits, including their claims that designated housing projects in unincorporated San Diego County cannot lawfully be approved or built based on VMT impacts, even if all GHG impacts are mitigated to "net zero."

301. This CEQA morass of extraordinary GHG reduction costs imposed only on residents of newly constructed housing, with still pending and unresolved CEQA lawsuit challenges against the CAP and specific housing projects, for GHG reductions that are not even quantified, let alone critical to California's climate leadership, is itself an ample demonstration of the disparate harms of CARB's poorly-conceived and discriminatory GHG Housing Measures.

302. The Scoping Plan's VMT reduction measure is likewise causing immediate, ongoing, and disparate harm to California's minority communities who are forced to drive ever-greater distances to find housing they can afford to buy or rent. As in the case of local climate action plans, there is no statewide statutory or regulatory mandate for reducing VMT. The

Legislature considered and rejected imposing a VMT reduction mandate, and CARB considered and rejected imposing a VMT reduction mandate as part of the regional land use and transportation planning mandated under SB 375 (first postponing its decision in December of 2017, at the same hearing CARB approved the Scoping Plan – and then definitively rejecting it in March of 2018).

303. At these hearings, CARB was informed that VMT had increased in California while transit utilization had fallen dramatically notwithstanding billions of dollars in new transit system investments. VMT reduction thus could not appropriately be included as SB 375 compliance metrics and with increases in electric and high efficiency hybrid vehicles, the correlation between VMT and GHG emissions is increasingly weak.

304. Even more than CARB's other GHG Housing Measures, the VMT reduction mandate is uniquely targeted to discriminate against minority workers. The American Community Survey ("ACS") is a project of the U.S. Census Bureau and tracks a wide range of data over time—including the ethnicity, transportation mode, and times of California commuters. The ACS data demonstrate that in the 10 year period between 2007 and 2016, 1,117,273 *more* Latino workers drove to their jobs, 377,615 *more* Asian workers drove to their jobs, and 18,590 *more* African American workers drove to their jobs.[135] During the same period, 447,063 *fewer* white workers drove to their jobs. Transit utilization increased for white and Asian workers, but fell for Latino and African American workers. During the same period, commute times lengthened substantially as more people—again disproportionately minorities—were forced to commute longer distances to housing they could afford.

305. By 2016, about 445,000 people in the Bay Area were commuting more than an hour each direction—an increase of 75% over the 2006 count of long distance Bay Area commuters. Anyone driving between the Bay Area and Central Valley during commute times vividly experiences the gridlock conditions, adverse personal health (e.g., stress, high blood

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[135] David Friedman, Jennifer Hernandez, California, Greenhouse Gas Regulation, and Climate Change, Holland & Knight, Chapman University Press (2018), Table 3.7, p. 84, https://www.chapman.edu/wilkinson/_files/ghg-fn.pdf.

pressure, back pain), and adverse family welfare (e.g., missed dinners, homework assistance, and exhaustion) consequences of these commutes.

306. CARB (and the Attorney General) also have no support for their argument disputing the fact that the challenged Housing Measures disproportionately affect minority community members. As early as 2014, CARB received a comprehensive report from NextGen, a firm closely aligned with the strongest supporters of California's climate leadership, urging CARB to restructure its electric car subsidy program, which was found to be disproportionately benefitting those in Marin County and other wealthier and whiter areas that could afford to purchase costly new electric vehicles. In "No Californian Left Behind," Next Gen noted the obvious: "the overwhelming majority of Californians still use cars to get to work," including 77% who commute alone and 12% who carpool. Further, "[i]n less densely developed and rural areas like California's San Joaquin Valley, commuters often have long distances to drive between home, school, work and shopping; as a result, car ownership is often not a choice, but a necessity." Even more specifically, the report found that in Fresno County, even for workers earning less than $25,000, fewer than 3 percent of commuters take public transportation to work; in Madera County, only 0.3% of low-income workers took transit, and the results were comparable in in the rest of the San Joaquin Valley. Next Generation, *No Californian Left Behind: Clean and Affordable Transportation Options for all through Vehicle Replacement*, *http://www.thenextgeneration.org/files/No_Californian_Left_Behind_1.pdf (February 27, 2014) at p. 9. NextGen advocated a restructured vehicle program designed to equitably retire and replace the oldest most polluting cars, and to shift subsidy and incentive programs to help those who are either low income or need rural transport to obtain cleaner, lower-GHG emitting cars. (*Id.* p. 5) NextGext noted:

> "California is already a leader in advanced and high tech transportation and transit solutions. It is time we also became a leader in pragmatic solutions for a population that is sometimes left behind in these discussions: non-urban, low-income, car-dependent households."

The VMT reduction mandate in the 2017 Scoping Plan was specifically identified as CARB was fully on notice of the disparate harms caused to minority communities by its approach. In a report submitted to CARB by the climate advocacy group NextGen in February 2014, CARB was informed that Central Valley Latinos drive longer distances than any other ethnic group in any other part of California—and live in communities and households with the highest poverty rates.

307. Notwithstanding CARB's express acknowledgement in March of 2018 (and preview in December of 2017) that even the regional transportation and housing plans required by SB 375 cannot attain a VMT reduction target, CARB and its fellow "Vibrant Communities Appendix" agencies, remain committed to using CEQA to require new projects—including housing that is affordable and critically needed for California's minority communities—to pay higher costs to fund VMT reductions through CEQA.

308. As with the "net zero" GHG mitigation mandate, the immediate and ongoing effect of this VMT reduction measure is to increase housing costs to even less affordable and attainable levels for California's minority communities.

309. Even before enactment of the 2017 Scoping Plan, OPR (the Vibrant Communities agency that has the responsibility for adopting regulatory updates to CEQA) had been proposing to regulate the act of driving a car (even an electric vehicle or carpool) one mile (one VMT) as a new CEQA "impact" requiring "mitigation"— independent of whether the mile that was driven actually caused any air quality, noise, GHG, safety, or other impacts to the physical environment.

310. This expansion of CEQA was prompted in 2013, when OPR was directed by the Legislature in SB 743 to adopt a metric other than congestion-related traffic delay in transit-served "infill" areas as the appropriate transportation impact required to be evaluated and mitigated under CEQA, since these neighborhoods were intentionally being planned for higher density, transit/bike/pedestrian rather than automobile-dependent, neighborhoods. Pub. Res. Code § 21099(b).

311. In SB 743, the Legislature authorized but did not require the state Office of Planning and Research (OPR) to use VMT as the replacement metric for transit-served areas, and authorized but did not require OPR to apply an alternate transportation impact metric outside

designated urban infill transit neighborhoods. OPR responded with three separate rounds of regulatory proposals, each of which proposed expanding CEQA by making VMT a new CEQA impact, and requiring new mitigation to the extent a VMT impact was "significant." OPR further proposed a series of VMT significance thresholds, analytical methodologies, and potential mitigation measures, which varied over time but included a "road diet" and measures to discourage reducing congestion, on the theory that such congestion could somehow "induce" transit use and VMT reductions.

312. Under all three sets of OPR proposals, projects would be required to do more mitigation to reduce significant VMT impacts—by reducing VMT (i.e., reducing GHG or other air pollutants is not a valid CEQA mitigation approach for a new VMT impact). OPR received scores of comments objecting to expanding CEQA by making driving a mile a new "impact" requiring "mitigation," particularly given the disparate impact such a metric has on minority communities and the many adverse impacts to the environment, and public health and welfare, caused by the housing crisis and the state's worst-in-the-nation commutes.

313. OPR, again and repeatedly citing to the asserted need to reduce VMT to meet California's GHG reduction and climate leadership commitments, held a recent round of workshops on VMT mitigation strategies, working in close coordination with CARB's earlier and since-abandoned proposal to include VMT reductions as a required SB 375 regional transportation plan compliance measures.

314. At these workshops, OPR and its outside experts from an Oregon university conceded that VMT could likely not be "mitigated" by reducing miles driven by the future residents of any particular housing project (e.g., by adding secure bike racks or charging extra for parking), since whether people drive a mile or call an Uber—or hop on a bike or bus—is a function of available, cost- and time-effective transportation modes as well as the incomes and planned destinations of future residents. Agency workshop participants expressly acknowledged that VMT had increased 6% over 2011 levels, even though California's primary climate statutes (including many programs designed to promote transit and higher density development, and many

billions of dollars in completed transit systems improvements) were in effect during this same period.

315. These experts also conceded that with the success of on-demand ride services like Uber and Lyft, including the increasing cost-effectiveness and popularity of voucher-based on-demand rides by transit agencies in lieu of operating fixed route buses with low and still-declining utilization levels, there was *no evidence* that VMT could be substantially reduced by a particular project in a particular location as part of the CEQA review process for that project.

316. Instead, the VMT mitigation proposals shared during the workshops required that new housing pay others to operate school buses, bikeshare, and make improvements to bike and pedestrian pathways to the extent these measures could be demonstrated to reduce VMT. The suggested VMT mitigation measures had in common the payment of substantial fees (with some options suggested requiring annual payments, in perpetuity, of $5000 per apartment or home).

317. A recent academic study of VMT mitigation under CEQA likewise concedes the difficulty of a particular project achieving VMT reductions, and endorses the concept of adding to housing and other project costs payments to VMT "banks" or "exchanges" to fund third party VMT reductions – VMT reductions that occur somewhere, by someone.

318. This OPR VMT saga, like CARB's ultimate decision not to require a VMT compliance metric under SB 375, further demonstrates that the 2017 Scoping Plan's VMT reduction mandate measure – which CARB's senior executive expressly acknowledged was intended to be "self-executing" - is a fundamentally flawed "throw-away" measure that was neither acknowledged nor given an equity, environmental, or economic evaluation before being included in CARB's 2017 Scoping Plan.

319. The last of the challenged GHG Housing Measures is the Vibrant Communities Appendix, in which eight state agencies (including OPR) join with CARB in committing to undertake a series of actions to implement the approved Scoping Plan. Some of these agencies already have begun implementing the Scoping Plan, to the immediate and ongoing harm of California minority communities who are already disproportionately suffering from the housing crisis.

320. The Vibrant Communities appendix is an "interagency vision for land use, **and** for discussion" (emphasis added) of "State-Level Strategies to Advance Sustainable, Equitable Communities and Reduce Vehicles Miles of Travel (VMT)." 2017 Scoping Plan Appendix C, p. 1.

321. **First,** all of disparate and unlawful current and ongoing harms described in connection with the Scoping Plan's VMT Reduction measure apply equally to the actions of other State agencies based on the Vibrant Communities appendix measures. None have a rational basis for claiming any actual success in reducing VMT through their respective direct regulatory activities.

322. **Second,** there is no constraint in the "Vibrant Communities Appendix" preventing any of the eight state agency signatories from taking immediate steps to directly enforce these "land use" policies, while claiming to "work together to achieve this shared vision and to encourage land use and transportation decisions that minimize GHG emissions." 2017 Scoping Plan Appendix C, p. 2.

323. OPR's VMT expansion of CEQA, discussed above, is an example of an agency action to reduce VMT and GHG that is at least subject to formal rulemaking procedures and is thus not yet being "implemented."

324. In contrast, in June of 2018, a combination of four Vibrant Communities Appendix implementing agencies joined by one other agency[136] announced that they would henceforth implement – without benefit of any further Legislative or regulatory action –the "December 2017 Scoping Plan directive". This announcement was made at the San Francisco Bay Area Regional Meeting announcing the "California's 2030 Natural and Working Lands Climate Change Implementation Plan." Consistent with the anti-housing bias built into CARB's GHG Housing Measures, these agencies collectively promised to avoid "conversion of land for development."

[136] The five agencies are: the California Environmental Protection Agency, the California Natural Resources Agency, CARB, the California Department of Food and Agriculture, and the Coastal Conservancy.

325. These five agencies made no exception for developing housing, even for housing that CARB has already concluded as part of the SB 375 regional plan process meets California's legislated GHG emission reduction requirements. These agencies likewise made no exception for transportation or other critical infrastructure, even if consistent with local and regional plans, even if approved by federal or state agencies other than this five-agency consortium, even if within an approved city limit, and even if approved by voters. *Simply put, these agencies – which have combinations of funding, permitting, planning and enforcement obligations – have signaled that they are not going to approve new development on land that is not already developed.*

326. The sole reed upon which this vast new legal prohibition rests is the 2017 Scoping Plan, and more specifically the Vibrant Communities Appendix. See SF Bay Area Regional Meeting, *California's 2020 Natural and Working Lands Climate Change Implementation Plan*, available at http://resources.ca.gov/wp-content/uploads/2018/08/SF-Bay-Area-NWL-meeting-presentation-6.18.pdf.

327. Less than 6% of California is urbanized, and each city and county is charged by state law with adopting a General Plan that must accommodate the housing, transportation, and infrastructure needs of its existing and planned future residents. Under SB 375, these local land use plans are effectively consolidated into regional transportation and land use plans that must accommodate future population and economic growth as well as meet CARB targets for reducing GHG from the land use sector. Every regional Sustainable Communities Strategy ("SCS") plan includes some combination of housing, infrastructure (including transportation improvements), schools and other land uses that are carefully and deliberatively sited within each jurisdiction's boundaries – and adopted only after each local government first complies with CEQA and completes an extensive public notice, comment, and hearing process before appointed and elected officials.

328. The decision of the California Department of Fish & Wildlife ("CDFW") to simply stop issuing permits for housing and related infrastructure projects that have already been approved by local elected officials, after community input, in compliance with all applicable laws—and have further already been approved by CARB, as part of the SB 375 regional plan

approval process—is a blatant example an announced harm being committed against housing by a state agency in furtherance of CARB's 2017 Scoping Plan.

329. **Third**, consistent with normal practice for lawsuits that include a claim that the respondent agency has failed to comply with CEQA, Petitioners elected to prepare the administrative record that is relevant to the disposition of this CEQA cause of action. The Legislature has specifically prescribed the content of the CEQA administrative record, which includes in part: "Any other written materials relevant to the respondent public agency's compliance with this division or to its decision on the merits of the project" and "all . . . internal agency communications, including staff notes and memoranda relating to the project." Pub. Res. Code § 21167.6(c)(10).

330. Petitioners timely sought the administrative record from CARB, and in another normal practice for CEQA lawsuits submitted requests filed under the California Public Records Act ("CPRA") to each of the Vibrant Communities Appendix agencies in relation to each agency's Scoping Plan and Vibrant Communities Appendix, and VMT or other Scoping Plan documents.

331. Many months later, only incomplete responses have been provided by CARB (which sought to limit the administrative record in this case to select excerpts from its Scoping Plan docket).

332. Several of the Vibrant Communities Appendix agencies, including CDFW, OPR, parent and affiliated agencies of each (Natural Resources Agency and Strategic Growth Council), and CalSTA, responded with minimal documents and instead asserted that the requested documents were exempt from disclosure under the CPRA because they could result in public "controversy."

333. One of these partially-responsive agencies admitted that the withheld documents involved the highest level of state government, and included legislative proposals. All of these partially-responsive agencies declined a second letter request to disclose the withheld documents, or provide a privilege log describing each withheld document and the reason for its concealment.

334. There is no centralized or otherwise public repository of Vibrant Communities Appendix agency documents that disclose to the public their current, planned, or future activities with respect to implementing the Scoping Plan. There is likewise no centralized or otherwise public repository of which implementing activities are being (or will be) directly undertaken, and which will not be undertaken without future rulemaking or authorizing legislation.

335. From just the "direct" implementation activities noted above—and in particular CARB's intervention in an ongoing CEQA project-level review to opine on GHG mitigation requirements in a manner that is contrary to published judicial opinions, and CDFW's announced intention to cease authorizing activities that would convert land to development with no exception for new housing or related infrastructure that is already included in approved General Plans, infrastructure plans, voter-approved bonds, or CARB-approved Sustainable Communities Strategies implementing SB 375, is ample evidence of the immediate and ongoing new costs and regulatory obstacles already being imposed by these agency Scoping Plan implementing actions.

336. CARB's GHG reduction compliance metric is arbitrary, not supported by science, has no rational basis, and is racially discriminatory. In California's GHG and climate leadership laws, the Legislature did not prescribe any specific measurement methodology or compliance metric for meeting California's GHG reduction goals. The methodology and metrics that CARB has chosen completely ignore massive GHG emissions that occur when California's forests burn, as has tragically occurred at a large scale for several of the past years, notwithstanding estimates that just one major forest fire wipes out an entire year of GHG reductions achieved by CARB's regulatory actions.[137]

337. Similarly, CARB does not count—or require reductions of—GHG emissions associated with imported foods or other goods, or with a multitude of other activities such as airplane trips. However, every time a California resident (or job) leaves California, CARB counts that as a GHG reduction—even though the top destinations for the hundreds of thousands of

[137] David Friedman, Jennifer Hernandez, California, Greenhouse Gas Regulation, and Climate Change, Holland & Knight, Chapman University Press (2017), p. 60-61, https://www.chapman.edu/wilkinson/_files/ghg-fn.pdf.

Californians who have migrated to lower cost states in recent years, notably including Texas, Arizona and Nevada—have per capita GHG emissions that are more than double the emissions those same individuals would have if they remained in California.

338. Climate change and GHG emissions are a global challenge, and nearly tripling the GHG emissions of a California family that needs to move to Texas or Nevada to find housing they can afford to rent or buy, increases global GHG.

339. It may be that there are other environmental priorities favored by CARB and its allies that justify policies that are in fact resulting in the displacement and relocation of California's minority communities, that reduce the state's population, and that eliminate higher energy production jobs like manufacturing that traditionally provided a middle class income (and home ownership) to a hard worker without a college degree. These discriminatory anti-minority policies cannot, however, be scientifically, politically, or legally justified in the name of global reductions of GHG.

340. CARB's International Policy Director on climate, former Obama administration senior climate team Lauren Sanchez, admitted that the GHG reduction metrics used by CARB – that simply and completely ignores the increased global GHG emissions from forcing Californians to live in high GHG states to find housing they can afford to buy with commute times that did not damage driver health, family welfare, and the environment - were "flawed" at the recent (October 2018) Environmental Law Conference in Yosemite. This admission rebuts the politically shocking and legally invalid assertion that it is constitutional for CARB to implement racially discriminatory measures (because CARB's discriminatory objective is merely to force minority Californians to either try to live in housing they cannot afford located nowhere near their job, or migrate to another state).

341. The 2017 Scoping Plan is required to reduce California's share of *global* GHG emissions, but it completely ignores massive emission sources that are controversial within the environmental community (e.g. managing California's massive wildfire risks which result in GHG emissions that dwarf CARB's regulatory GHG reductions, based on what the non-partisan

Little Hoover Commission reported in February 2018 as a century of forest mismanagement including clashes between environmental agencies). [138]

342. The 2017 Scoping Plan also completely ignores other massive GHG emissions attributed to the behavior of wealthier Californians (e.g., airplane rides, and consumption of costly imported consumer products).[139] Instead, as summarized a Chapman University Research Brief, CARB has administered California's climate laws with actions such as the 2017 Scoping Plan that drive up the fundamental costs of living for ordinary Californians—housing, electricity, transportation—and thereby drive more people (and disproportionately minorities) into poverty, and out of the state.[140]

343. The 2017 Scoping Plan fails even the most rudimentary "rational basis" constitutional test, and it is being implemented today by organizations and agencies including CARB that are driving up housing costs and blocking housing projects today. To cause this much pain and hardship to this many people, and to place the greatest burdens on those already disparately harmed by the housing crisis, is unconscionable. It is also ongoing, illegal, and unambiguously intentional, for CARB to impose these "flawed" GHG reduction metrics that cause disparate harms to racial minorities living in California.

344. The foregoing paragraphs describe agency actions that are exacerbating the State's extreme poverty, homelessness and housing crisis while *increasing* global GHG emissions by driving Californians to higher per capita GHG states.[141]

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[138] Little Hoover Commission, *Fire on the Mountain: Rethinking Forest Management in the Sierra Nevada* (February 2018), available at https://lhc.ca.gov/report/fire-mountain-rethinking-forest-management-sierra-nevada.

[139] Bay Area Air Quality Management District and Cool Climate Network at UC Berkeley, *Consumption-Based GHG Emissions Inventory: Prioritizing Climate Action for Different Locations* (December 15, 2015), available at https://escholarship.org/uc/item/2sn7m83z

[140] Friedman, Id., Summary at p. 7-9.

[141] Philip Reese, *California Exports Its Poor to Texas, Other States, While Wealthier People Move In*, The Sacramento Bee (Mar. 5, 2017), available at http://www.sacbee.com/news/state/california/article136478098.html; Drew Lynch, *Californians Consider Moving Due to Rising Housing Costs, Poll Finds*, Cal Watchdog (Sept. 21, 2017), available at https://calwatchdog.com/2017/09/21/californians-consider-moving-due-rising-

345. CARB's new GHG Housing Measures, individually and collectively, on their face and as applied, deprive Petitioners, including but not limited to RODRIGUEZ, MURILLO and PEREZ, and other historically-disadvantaged minorities, of the fundamental right to live in communities that are free from arbitrary, government-imposed standards whose inevitable effect is to perpetuate their exclusion from participation in the housing markets in or near the communities in which they work. CARB's new GHG Housing Measures, individually and collectively, on their face and as applied, have a disparate adverse impact on Petitioners, including but not limited to RODRIGUEZ, MURILLO and PEREZ, and other historically-disadvantaged minorities, as compared to similarly-situated non-minorities who currently enjoy affordable access to housing near their workplaces.

346. CARB's new GHG Housing Measures, on their face and as applied to the sorely-needed development of new, affordable housing, are arbitrary and not rationally related to the furtherance of their purported regulatory goal of reducing overall GHG emissions.

H. CARB'S GHG Housing Measures Are "Underground Regulations" and Ultra Vires

347. A regulation is defined as "every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure." Gov. Code § 11342.600.

348. State agencies are required to adopt regulations following the procedures established in the APA and are prohibited from issuing and enforcing underground regulations. Gov. Code § 11340.5. Under the APA, an underground regulation is void.

349. Each of CARB's new GHG Housing Measures are being implemented by CARB, and other state and local agencies, without further rulemaking or compliance with the APA. The GHG Housing Measures are underground regulations requiring APA compliance, and cannot be

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housing-costs-poll-finds/; U.S. Energy Information Agency, State Carbon Dioxide Emissions Data, October 2017, available at https://www.eia.gov/environment/emissions/state/.

lawfully implemented absent authorizing Legislation or formal rulemaking (inclusive of environmental and economic review as required by the APA).

350. CARB's new GHG Housing Measures infringe on areas reserved for other State agencies in two ways:

A. Senate Bill ("SB") 97 directs OPR to develop CEQA significance thresholds via the CEQA Guidelines. OPR's update does not include the Scoping Plan's presumptive CEQA GHG threshold. CARB was expressly allowed by the Legislature in SB 97 to adopt a CEQA significance threshold only in the context of updates to the CEQA Guidelines, which must undergo a rigorous rulemaking process. CARB has acted *ultra vires* and contrary to the express command of the Legislature in adopting its recommended CEQA significance threshold in the Scoping Plan.

B. California has adopted new building standards, which are designed to assure that new building code requirements are cost effective (with payback to the consumer). "Net zero" new home building standards were not included. CARB has no Legislative authority to bypass and frustrate this consumer protection law by using CEQA as a workaround to require "net zero".[142]

351. In articulating and publishing its new GHG Housing Measures, CARB has not complied with the APA's rulemaking procedures and requirements. As a consequence, CARB's new GHG Housing Measures are unlawful underground regulations, and should be held to be void and of no effect.

FIRST CAUSE OF ACTION

(Fair Employment and Housing Act, Gov. Code § 12955 *et seq.*)

352. Petitioners hereby re-allege and incorporate herein by reference the allegations contained in paragraphs 1-351 above, as well as in paragraphs 358-458.

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[142] See generally California Department of Housing and Community Development, State Housing Law Program Laws and Regulations, http://www.hcd.ca.gov/building-standards/state-housing-law/state-housing-laws-regulations.shtml.

353. The Fair Employment and Housing Act (Gov. Code , § 12955 *et seq.*) ("FEHA") provides, *inter alia*, that: "It shall be unlawful . . . (l) To discriminate through public or private land use practices, decisions, and authorizations, because of race, color, . . national origin, source of income or ancestry."

354. CARB's new GHG Housing Measures, on their face and as applied, constitute public land use practices decisions and/or policies subject to the FEHA.

355. CARB's new GHG Housing Measures actually and predictably have a disparate negative impact on minority communities and are discriminatory against minority communities and their members, including but not limited to Petitioners RODRIGUEZ, MURILLO, and PEREZ.

356. CARB's new GHG Housing Measures and their discriminatory effect have no legally sufficient justification. They are not necessary to achieve (nor do they actually tend to achieve) any substantial, legitimate, nondiscriminatory interest of the State, and in any event such interests can be served by other, properly-enacted standards and regulations having a less discriminatory effect.

357. Because of their unjustified disparate negative impact on members of minority communities, including Petitioners, CARB's new GHG Housing Measures violate the FEHA, and should be declared unlawful and enjoined.

SECOND CAUSE OF ACTION

(Federal Housing Act and HUD Regulations, 42 U.S.C. § 3601 *et seq.*; 24 C.F.R. Part 100)

358. Petitioners hereby re-allege and incorporate herein by reference the allegations contained in paragraphs 1-357 above, as well as paragraphs 368-458.

359. The Federal Housing Act (42 U.S.C. § 3601 *et seq.*) ("FHA") was enacted in 1968 to combat and prevent segregation and discrimination in housing. The FHA's language prohibiting discrimination in housing is broad and inclusive, and the purpose of its reach is to replace segregated neighborhoods with truly integrated and balanced living patterns.

360. In formal adjudications of charges of discrimination under the FHA over the past 20-25 years, the U.S. Department of Housing and Urban Development ("HUD") has consistently

concluded that the FHA is violated by facially neutral practices that have an unjustified discriminatory effect on the basis of a protected characteristic, regardless of intent.

361. Pursuant to its authority under the FHA, HUD has duly promulgated and published nationally-applicable federal regulations implementing the FHA's Discriminatory Effects Standard at 24 C.F.R. Part 100 (*see* 78 Fed.Reg. 11460-01 (February 15, 2013)) ("HUD Regulations"). These HUD Regulations continue to apply, and have the force and effect of law.

362. HUD Regulations provide, *inter alia*, that liability under the FHA may be established "based on a practice's discriminatory effect . . . even if the practice was not motivated by a discriminatory intent." 24 C.F.R. § 100.500.

363. HUD Regulations further provide that: "A practice has a discriminatory effect where it actually or predictably results in a disparate impact on a group of persons or perpetuates segregated housing patterns because of race, color, . . . or national origin."

364. CARB's GHG Housing Measures actually and predictably result in a disparate impact on members of minority communities, including but not limited to Petitioners, and perpetuates segregated housing patterns because of race, color, and/or national origin within the meaning of the FHA and HUD Regulations.

365. Because of the discriminatory effect of CARB's GHG Housing Measures, CARB has the burden of proving that these GHG Housing Measures do not violate the FHA as interpreted and implemented through the HUD Regulations.

366. CARB has not met, and cannot meet, its burden of trying to justify the discriminatory effect of its challenged GHG Housing Measures, which are not necessary to achieve the stated goals, which could and should be pursued through other measures having a less discriminatory effect.

367. Because CARB's GHG Housing Measures have an unjustified discriminatory effect on members of minority communities, including Petitioners, they violate the FHA as implemented though HUD Regulations. Consequently, CARB's GHG Housing Measures should be declared unlawful and enjoined, and Petitioners are entitled to other and further relief pursuant to 42 U.S.C. § 1983.

THIRD CAUSE OF ACTION

(Denial of Due Process, Cal. Const. Art. I, § 7; U.S. Const. Amd. 14, § 1)

368. Petitioners hereby re-allege and incorporate herein by reference the allegations contained in paragraphs 1-367 above, as well as paragraphs 373-448.

369. Petitioners have a right to be free of arbitrary State regulations that are imposed without having first been presented to the public through duly-authorized rulemaking processes by Legislatively-authorized State agencies.

370. CARB's new GHG Housing Measures, individually and collectively, will inevitably cause serious harm to the ability of Petitioners and other members of disadvantaged minority communities to gain access to affordable housing, and have a disproportionate adverse impact on them.

371. CARB's new GHG Housing Measures are not rationally calculated to further the State's legitimate interest in reducing GHG emissions, on their face or as applied to housing projects in California. Instead, CARB's new GHG Housing Measures are both arbitrary and counterproductive in terms of actually achieving their purported goals of GHG emission reductions.

372. For these reasons, CARB's GHG Housing Measures have been issued in violation of, and constitute substantive violations of, the Due Process Clauses of the California and United States Constitutions. (Cal. Const. Art. 1, § 7; U.S. Const. Amd. 14, § 1,)

FOURTH CAUSE OF ACTION

(Denial of Equal Protection, Cal. Const. Art. I, § 7, Art. IV § 16; U.S. Const. Amd. 14, § 1)

373. Petitioners hereby re-allege and incorporate herein by reference the allegations contained in paragraphs 1-372 above, as well as 382-458.

374. Non-discriminatory access to housing is a fundamental interest for purposes of evaluating regulations under the equal protection provisions of the California Constitution. Art. I, § 7 and Art. IV, § 16.

375. Non-discriminatory access to housing is a fundamental interest for purposes of evaluating regulations under the equal protection clause of the United States Constitution. U.S. Const. Amd. 14, § 1.

376. CARB's GHG Housing Measures disproportionately affect members of minority communities, including Petitioners RODRIGUEZ, MURILLO and PEREZ, by making affordable housing unavailable to them, as compared with non-minority homeowners unaffected by the new GHG regulations, while imposing arbitrary, counter-productive State regulations and standards.

377. Race and ethnicity are suspect classes for purposes of evaluating regulations under the equal protection provisions of the California Constitution. Art. I, § 7 and Art. IV, § 16.

378. Race and ethnicity are suspect classes for purposes of evaluating regulations under the equal protection clause of the United States Constitution. U.S. Const. Amd. 14, § 1.

379. Petitioners warned CARB about the racially discriminatory aspects of the Scoping Plan prior to CARB's finalizing and issuing the Scoping Plan. Despite Petitioners' warning, CARB disregarded these impacts and issued the Scoping Plan without changes. On information and belief, CARB did so with the intent to disproportionately cause harm to racial minorities, including minority communities of which Petitioners are members.

380. CARB's GHG Housing Measures violate the equal protection provisions of the California Constitution because they make access to new, affordable housing a function of race.

381. CARB's GHG Housing Measures violate the equal protection clause of the United States Constitution because they make access to new, affordable housing a function of race.

FIFTH CAUSE OF ACTION

(Violations of CEQA, Pub. Res. Code § 21000 *et seq.* and CEQA Guidelines, 14 C.C.R. § 15000 *et seq.*)

382. Petitioners hereby re-allege and incorporate herein by reference the allegations contained in paragraphs 1-381 above, as well as paragraphs 395-458.

383. CARB violated CEQA by approving the 2017 Scoping Plan in violation of the Act's requirements and by certifying a legally deficient environmental analysis.

384. CARB did not write its Final EA in plain language so that members of the public could readily understand the document.

385. CARB did not assess the "whole of the project" as required by CEQA. The GHG Housing Measures are included in the 2017 Scoping Plan and thus the "project" for CEQA purposes should have included potential direct and indirect impacts on the environment from the four GHG Housing Measures. CARB did not include an analysis of the four GHG Housing Measures in the EA.

386. CARB did not base its Final EA on an accurate, stable, and finite project description. The EA did not include the four GHG Housing Measures in its project description. For this reason CARB applied an unreasonable and unlawful "project" definition and undermined CEQA's informational and decision-making purposes. The project description was misleading, incomplete, and impermissibly vague.

387. CARB did not properly identify the Project objectives in its EA.

388. CARB's unlawful use of the "cumulative gap" methodology created multiple legal deficiencies in the EA, including in the project description, project objectives, and impact analysis. Had CARB used the appropriate project objective—reducing GHG 40% below the 1990 California GHG inventory by 2030—the estimated 1% of GHG reductions (1.79 tons per year) achieved by the GHG Housing Measures would have been entirely unnecessary, and all disparate and unlawful adverse civil rights, environmental, housing, homelessness, poverty, and transportation consequences of the GHG Housing Measures could have been avoided.

389. At most, CARB could have clearly identified its "cumulative gap" methodology as an alternative to the project that would have further reduced GHG emissions beyond the SB 32 statutory mandate, to further inform the public and decisionmakers of the comparative impacts and consequences of SB 32's legislated GHG reduction mandate, and the more substantial GHG reductions sought by CARB staff. CARB's failure to use the SB 32 statutory mandate of achieving 40% GHG reduction from 1990 levels as of 2030 is a fatal legal flaw.

390. CARB also failed to adequately evaluate the direct, indirect, and cumulative environmental impacts of the 2017 Scoping Plan in its Final EA, even after commenters identified

numerous review gaps in their comments on the Draft EA. As discussed above, CARB was fully on notice of the scale and nature of the impacts associated with the GHG Housing Measures based on CARB's review and approval of more than a dozen regional plans to intensify housing densities near transit, and improve public transit, from all of California's most significant population centers; each of these regional plans identified multiple unavoidable significant adverse environmental impacts from implementation of current plans. The deficiencies in the Final EA include but are not limited to the following:

- Aesthetic impacts such as changes to public or private views and character of existing communities based on increased building intensities and population densities;
- Air quality impacts from increases in GHG, criteria pollutants, and toxic air contaminant emissions due to longer commutes and forced congestion that will occur from the implementation of the VMT limits in the 2017 Scoping Plan;
- Biological impacts from increased usage intensities in urban parks from substantial infill population increases;
- Cultural impacts including adverse changes to historic buildings and districts from increased building and population densities, and changes to culturally and religiously significant resources within urbanized areas from increased building and population densities;
- Urban agriculture impacts from the conversion of low intensity urban agricultural uses to high intensity, higher density uses from increasing populations in urban areas, including increasing the urban heat island GHG effect;
- Geology/soils impacts from building more structures and exposing more people to earthquake fault lines and other geologic/soils hazards by intensifying land use in urban areas;
- Hazards and hazardous materials impacts by locating more intense/dense housing and other sensitive uses such as schools and senior care facilities near freeways, ports, and stationary sources in urbanized areas;

- Hydrology and water quality impacts from increasing volumes and pollutant loads from stormwater runoff from higher density/intensity uses in transit-served areas as allowed by current stormwater standards;
- Noise impacts from substantial ongoing increases in construction noise from increasing density and intensity of development in existing communities and ongoing operational noise from more intensive uses of community amenities such as extended nighttime hours for parks and fields;
- Population and housing impacts from substantially increasing both the population and housing units in existing communities;
- Recreation and park impacts from increasing the population using natural preserve and open space areas as well as recreational parks;
- Transportation/traffic impacts from substantial total increases in VMT in higher density communities, increased VMT from rideshare/carshare services and future predicted VMT increases from automated vehicles, notwithstanding predicted future decrease in private car ownership;
- Traffic-gridlock related impacts and multi-modal congestion impacts including noise increases and adverse transportation safety hazards in areas of dense multi-modal activities;
- Public safety impacts due to impacts on first responders such as fire, police, and paramedic services from congested and gridlocked urban streets; and
- Public utility and public service impacts from substantial increases in population and housing/employment uses and demands on existing water, wastewater, electricity, natural gas, emergency services, libraries and schools.

391. As stated above, although the Scoping Plan's CEQA threshold is not binding on a lead agency, it nevertheless has immediate evidentiary weight as the expert conclusion of the state's expert GHG agency. Thus, the Scoping Plan's CEQA threshold is appropriately justiciable, and should be vacated for the reasons set forth herein.

392. As a result of these defects in the Final EA, CARB prejudicially abused its discretion by certifying an EIR that does not comply with CEQA and by failing to proceed in the manner required by law.

393. Petitioners objected to CARB's approvals of the GHG Housing Measures prior to the close of the final public hearings on CARB's 2017 Scoping Plan and raised each of the legal deficiencies asserted in this Petition.

394. Petitioners have performed all conditions precedent to the filing of this Petition, including complying with the requirements of Pub. Res. Code section 21167.5 by serving notice of the commencement of this action prior to filing it with this Court.

SIXTH CAUSE OF ACTION

(Violations of APA, Gov. Code § 11346 *et seq.*)

395. Petitioners hereby re-allege and re-incorporate herein by reference the allegations of paragraphs 1-394 above, as well as paragraphs 405-458.

396. Under the APA and other applicable law, CARB is required to comply with regulations issued by the Department of Finance ("DOF") before issuing a "major regulation." Specifically, the APA (Gov. Code § 11346.3(c)) requires that CARB prepare a standardized regulatory impact assessment ("SRIA") in a form, and with content, that meets requirements set by the DOF in its separate regulations (1 C.C.R. § 2000 *et seq.*).

397. CARB's GHG Housing Measures constitute a major regulation subject to the APA's requirement that such regulations be promulgated in compliance with DOF regulations.

398. Section 2003 of DOF regulations (1 C.C.R. § 2003(a)) ("Methodology for Making Estimates") provides that, "[i]n conducting the SRIA required by Section 11346.3", CARB "shall use an economic impact method and approach that has all of the following capabilities:

(1) Can estimate the total economic effects of changes due to regulatory policies over a multi-year time period.

(2) Can generate California economic variable estimates such as personal income, employment by economic sector, exports and imports, and gross state product, based on inter-

industry relationships that are equivalent in structure to the Regional Industry Modeling System published by the Bureau of Economic Analysis.

(3) Can produce (to the extent possible) quantitative estimates of economic variables that address or facilitate the quantitative or qualitative estimation of the following.

(A) The creation or elimination of jobs within the state;

(B) The creation of new businesses or the elimination of existing businesses within the state;

(C) The competitive advantages or disadvantages for businesses currently doing business within the state;

(D) The increase or decrease of investment in the state;

(E) The incentives for innovation in products, materials, or processes; and

(F) The benefits of the regulations, including but not limited to benefits to the health, safety, and welfare of California residents, worker safety, and the state's environment and quality of life, among any other benefits identified by the agency."

399. DOF regulations require that DOF's "most current publicly available economic and demographic projections, which may be found on the department's website, shall be used unless the department approves the agency's written request to use a different projection for a specific proposed major regulation." 1 C.C.R. § 2003(b).

400. DOF regulations also provide that: "An analysis of estimated changes in behavior by businesses and/or individuals in response to the proposed major regulation shall be conducted and, if feasible, an estimate made of the extent to which costs or benefits are retained within the business and/or by individuals or passed on to others, including customers, employees, suppliers and owners." 1 C.C.R. § 2003(f).

401. In grafting its new GHG Housing Measures onto the 2017 Scoping Plan, CARB has failed to comply with the APA, including DOF regulations applicable to CARB.

402. More significantly, and consistent with the LAO's repeated findings that the CARB analysis methodology fails to provide sufficiently detailed information about impacts to individuals, households and businesses, CARB's 2017 Scoping Plan completely ignores the fact

that California has the greatest inequality in the United States, and that energy costs, loss of energy-intensive jobs and housing costs related to Scoping Plan policies play a major role in that unwanted outcome. To fulfill its statutory mandates, CARB must start by recognizing that, as meticulously documented in a United Way Study, more than 30% of all California households lack sufficient means to meet the real cost of living in the state.

403. In addition, as described above, by using the unlawful "cumulative gap" methodology to calculate the GHG reductions it claims are needed in the 2017 Scoping Plan, CARB improperly created inputs for the FA that render the entire document invalid.

404. In its present form, the Scoping Plan embodies multiple violations of the APA and should be set aside as unlawful and void.

SEVENTH CAUSE OF ACTION

(Violations of the California Global Warming Solutions Act, Health & Safety Code § 38500 *et seq.*)

405. Petitioners hereby re-allege and incorporate herein by reference the allegations contained in paragraphs 1-404 above, as well as paragraphs 413-458.

406. The GWSA provides in pertinent part that, in promulgating GHG regulations, CARB "shall do all of the following:

(1) Design the regulations, including distribution of emissions allowances where appropriate, in a manner that is equitable, seeks to minimize costs and maximize the total benefits to California, and encourages early action to reduce greenhouse gas emissions.

(2) Ensure that activities undertaken to comply with the regulations do not disproportionately impact low-income communities.

(3) Ensure that entities that have voluntarily reduced their greenhouse gas emissions prior to the implementation of this section receive appropriate credit for early voluntary reductions.

(4) Ensure that activities undertaken pursuant to the regulations complement, and do not interfere with, efforts to achieve and maintain federal and state ambient air quality standards and to reduce toxic air contaminant emissions.

(5) Consider cost-effectiveness of these regulations.

(6) Consider overall societal benefits, including reductions in other air pollutants, diversification of energy sources, and other benefits to the economy, environment, and public health."

407. In responses to Petitioners' comments on the 2017 Scoping Plan, CARB has acknowledged that Chapter 5 of the Scoping Plan (which sets out the new GHG Housing Measures) was not part of what it analyzed in issuing the Scoping Plan. In CARB's words, "These recommendations in the 'Enabling Local Action' subchapter of the Scoping Plan are not part of the proposed 'project' for purposes of CEQA review."[143] Thus, CARB admits that it did not even pretend to analyze the consequences of the provisions of Chapter 5 of the Scoping Plan.

408. CARB's assertion that the new GHG Housing Measures set out in Chapter 5 of the Scoping Plan do not constitute "major regulations" is belied by their content and the legal and regulatory setting in which they were issued, as described above.

409. Each scoping plan update must also identify for each emissions reduction measure, the range of projected GHG emission reductions that result from the measure, the range of projected air pollution reductions that result from the measure, and the cost-effectiveness, including avoided social costs, of the measure. H&S Code § 38562.7.

410. The 2017 Scoping Plan contains no such analysis for CARB's new GHG Housing Measures. The Plan lists potential emission reductions from the "Mobile Source Strategy" which includes the VMT reduction requirements, but does not analyze proposed emission reductions, projected air pollution reductions, or cost-effectiveness of the other measures.

411. CARB's new GHG Housing Measures, as set out in its 2017 Scoping Plan, were issued in violation of some or all of the specific statutory requirements set out in the GWSA, as described above.

[143] Supplemental Responses to Comments on the Environmental Analysis Prepared for the Proposed Strategy for Achieving California's 2030 Greenhouse Gas Target (Dec. 14, 2017), p. 14-16, https://www.arb.ca.gov/cc/scopingplan/final-supplemental-rtc.pdf.

412. As a consequence, CARB's new GHG Housing Measures were adopted in a manner that is contrary to law, and should be set aside.

EIGHTH CAUSE OF ACTION

(Violations of the Health & Safety Code, § 39000 *et seq.*, including the California Clean Air Act, Stats. 1988, ch. 1568 (AB 2595))

413. Petitioners hereby re-allege and incorporate herein by reference the allegations contained in paragraphs 1-412 above, as well as paragraphs 437-458.

414. California has ambient air quality standards ("CAAQS") which set the maximum amount of a pollutant (averaged over a specified period of time) that can be present in outdoor air without any harmful effects on people or the environment.

415. CAAQS are established for particulate matter ("PM"), ozone, nitrogen dioxide ("NO_2"), sulfate, carbon monoxide ("CO"), sulfur dioxide ("SO_2"), visibility-reducing particles, lead, hydrogen sulfide ("H_2S"), and vinyl chloride.

416. In California, local and regional authorities have the primary responsibility for control of air pollution from all sources other than motor vehicles. H&S Code § 39002.

417. Under the California Clean Air Act ("CCAA"), air districts must endeavor to achieve and maintain the CAAQS for ozone, carbon monoxide, sulfur dioxide, and nitrogen dioxide by the earliest practicable date. H&S Code § 40910. Air districts must develop attainment plans and regulations to achieve this objective. *Id.*; H&S Code § 40911.

418. Each plan must be designed to achieve a reduction in districtwide emissions of five percent or more per year for each nonattainment pollutant or its precursors. H&S Code § 40914(a). CARB reviews and approves district plans to attain the CAAQS (H&S Code § 40923; 41503) and must ensure that every reasonable action is taken to achieve the CAAQS at the earliest practicable date (H&S Code § 41503.5).

419. If a local district is not effectively working to achieve the CAAQS, CARB may establish a program or rules or regulations to enable the district to achieve and maintain the CAAQS. H&S Code § 41504. CARB may also exercise all the powers of a district if it finds the

district is not taking reasonable efforts to achieve and maintain ambient air quality standards. H&S Code § 41505.

420. Fresno County is part of the San Joaquin Valley Air Pollution Control District ("SJVAPCD"). The SJVAPCD is currently nonattainment/severe for the CAAQS for ozone and nonattainment for PM.

421. The vast majority of California is designated nonattainment for the CAAQS for ozone and PM.

422. Nitrogen oxides, including NO_2, CO, and volatile organic compounds ("VOCs") are precursor pollutants for ozone, meaning they react in the atmosphere in the presence of sunlight to form ozone.

423. PM is a complex mixture of extremely small particles and liquid droplets found in the air which can cause serious health effects when inhaled, including asthma and other lung issues and heart problems. Some particles are large enough to see while others are so small that they can get into the bloodstream. PM is made up of PM_{10} (inhalable particles with diameters 10 micrometers and smaller) and $PM_{2.5}$ (fine inhalable particles with diameters 2.5 micrometers and smaller).

424. PM emissions in California and in the SJVAPCD increased in 2016 as compared to prior years.

425. As detailed above, the VMT reduction requirements in the 2017 Scoping Plan will result in increased congestion in California.

426. Increasing congestion increases emissions of multiple pollutants including NO_x, CO, and PM. This would increase ozone and inhibit California's ability to meet the CAAQS for ozone, NO_2, and PM, among others.

427. Because CARB intends to achieve the VMT reduction standard by intentionally increasing congestion, which will increase emissions of criteria pollutants such as NO_2 and PM, CARB is violating its statutory duty to ensure that every reasonable action is taken to expeditiously achieve attainment of the CAAQS.

428. In addition to a responsibility under the CCAA to meet the CAAQS, CARB has a statutory duty under the Health & Safety Code to ensure that California meets the National Ambient Air Quality Standards ("NAAQS") set by the EPA.

429. Like the CAAQS, the NAAQS are limits on criteria pollutant emissions which each air district must attain and maintain. EPA has set NAAQS for CO, lead, NO_2, ozone, PM, and SO_2.

430. CARB is designated the air pollution control agency for all purposes set forth in federal law. H&S Code § 39602. CARB is responsible for preparation of the state implementation plan ("SIP") required by the federal Clean Air Act ("CAA") to show how California will attain the NAAQS. CARB approves SIPs and sends them to EPA for approval under the CAA. H&S Code § 40923.

431. While the local air districts have primary authority over nonmobile sources of air emissions, adopt rules and regulations to achieve emissions reductions, and develop the SIPs to attain the NAAQS (H&S Code § 39602.5), CARB is charged with coordinating efforts to attain and maintain ambient air quality standards (H&S Code § 39003) and to comply with the CAA (H&S Code § 39602).

432. CARB also must adopt rules and regulations to achieve the NAAQS required by the CAA by the applicable attainment date and maintain the standards thereafter. H&S Code § 39602.5. CARB is thus responsible for ensuring that California meets the NAAQS.

433. SJVAPCD is nonattainment/extreme for the ozone NAAQS and nonattainment for $PM_{2.5}$.

434. The vast majority of California is nonattainment for the ozone NAAQS and much of California is nonattainment for PM_{10}.

435. It is unlawful for CARB to intentionally undermine California's efforts to attain and maintain the NAAQS by adopting measures in the 2017 Scoping Plan that will increase NOx and PM by intentionally increasing congestion in an attempt to lower VMT to purportedly achieve GHG emission reductions.

436. In adopting the VMT reduction requirements in the 2017 Scoping Plan, CARB is violating its statutorily mandated duty in the Health & Safety Code to attain and maintain the NAAQS, and preventing the local air districts from adequately discharging their duties under law to do everything possible to attain and maintain the NAAQS.

NINTH CAUSE OF ACTION

(Violations of the APA - Underground Regulations, Gov. Code § 11340 – 11365)

437. Petitioners hereby re-allege and incorporate herein by reference the allegations contained in paragraphs 1-436 above, as well as paragraphs 442-458.

438. As explained above, the GHG Housing Measures are standards of general application for state agencies and standards to implement and interpret the 2017 Scoping Plan and the reductions in GHG emissions it is designed to achieve.

439. The four GHG Housing Measures in CARB's 2017 Scoping Plan are underground regulations in violation of APA standards requiring formal rulemaking.

440. As to the CEQA net zero GHG threshold specifically, the Legislature directed OPR to adopt CEQA guidelines as regulations and CEQA itself requires that public agencies that adopt thresholds of significance for general use must do so through ordinance, resolution, rule, or regulations developed through a public review process. CEQA Guidelines § 15064.7(b). Thus, any state agency that purports to adopt CEQA guidelines must do so via regulations, following the full formal rulemaking process in the APA.[144]

441. CARB has not adopted the GHG Housing Measures through a public review process and thus it violates the APA.

[144] *California Building Industry Ass'n v. Bay Area Air Quality Mgmt. Dist.* (2016) 2 Cal.App. 5th 1067 (stating that air district adoption of CEQA guidelines, including GHG thresholds of significance, must be adopted as regulations, including with public notice and comment, and are not mere advisory expert agency opinion).

TENTH CAUSE OF ACTION

(Ultra Vires Agency Action, Code of Civil Proc. §1085)

442. Petitioners hereby re-allege and incorporate herein by reference the allegations contained in paragraphs 1-441 above.

443. In adopting the 2017 Scoping Plan, including the GHG Housing Measures, CARB has acted beyond its statutorily delegated authority and contrary to law.

CEQA Net Zero GHG Threshold

444. The 2017 Scoping Plan would apply a CEQA net zero GHG emissions threshold to all CEQA projects. CEQA applies to the "whole of a project", which includes construction activities, operation of new buildings, offsite electricity generation, waste management, transportation fuel use, and a myriad of other activities.

445. This threshold is unlawful under *Newhall, supra,* 62 Cal.4th 204, and other current California precedent affirming that compliance with law is generally an acceptable CEQA standard. This includes, but is not limited to, using compliance with the cap-and-trade program as appropriate CEQA mitigation for GHG and transportation impacts. *Association of Irritated Residents v. Kern County Bd. of Supervisors* (2017) 17 Cal.App.5th 708.

446. This threshold is also unlawful under OPR's GHG CEQA rulemaking package which stated that there was not a CEQA threshold requiring no net increase in GHG emissions (i.e., no one molecule rule). *See* "Final Statement of Reasons for Regulatory Action", Amendments to the State CEQA Guidelines Addressing Analysis and Mitigation of Greenhouse Gas Emissions Pursuant to SB 97, Dec. 2009, p. 25 ([n]otably, section 15064.4(b)(1) is not intended to imply a zero net emissions threshold of significance. As case law makes clear, there is no "one molecule rule" in CEQA. (CBE, *supra,* 103 Cal.App.4th 120)").

Regulating In An Attempt to Achieve the 2050 GHG Emission Reduction Goal

447. CARB also acted ultra vires by attempting to mandate GHG Housing Measures that purportedly would help California achieve the 2050 GHG reduction goal in Executive Order S-3-05.

448. CARB has no Legislative authority to regulate towards achieving the 2050 goal, a GHG emission reduction target which has not been codified and which the Legislature has repeatedly refused to adopt. Mandating actions in an attempt to reach the 2050 goal is outside CARB's statutory authority under the GWSA which only contains GHG emission reduction standards for 2020 and 2030.

449. The Legislative Analyst's Office has stated that, based on discussions with Legislative Counsel, it is unlikely that CARB has authority to adopt and enforce regulations to achieve more stringent GHG targets. LAO report, p. 7.

VMT Reduction Requirements

450. In addition, the VMT reduction standards mandated in the Scoping Plan are ultra vires and beyond CARB's statutory authority.

451. The Legislature rejected legislation as recently as 2017 requiring VMT reductions/standards.

452. The only agency authorized to consider VMT under CEQA is OPR under SB 743. OPR's proposed SB 743 regulations are going through a formal rulemaking process now and CARB cannot jump the gun and, with zero statutory authority, adopt VMT regulations in the 2017 Scoping Plan.

SB 97 and OPR Promulgation of CEQA Guidelines

453. Similarly, the only method by which the Legislature authorized OPR (with CARB's permissive but not mandatory cooperation) to adopt new CEQA significance thresholds is via updates to the CEQA Guidelines.

454. OPR has not included CARB's new GHG Housing Measures in its proposed new Guidelines, and CARB has no authority to make an "end run" around the rulemaking process established by the Legislature.

New Building Code Requirements

455. The Legislature has enacted new consumer protection requirements, including new building standards, designed to assure that new building code requirements are cost effective.

CARB's "net zero" new home building standard was not included in these new building standards.

456. CARB has no Legislative authority to impose new "net zero" building standards.

457. CARB's new "net zero" building standards are contrary to, and will substantially frustrate, the Legislature's purpose in adopting new building code requirements.

458. CARB's decision to adopt the 2017 Scoping Plan and the GHG Housing Measures within it was also fraught with procedural defects, including violations of the APA, CEQA, and GWSA, as explained above. These procedural defects are further actions that are *ultra vires* and were taken contrary to law.

PRAYER FOR RELIEF

WHEREFORE Petitioners THE TWO HUNDRED, including LETICIA RODRIGUEZ, TERESA MURILLO and EUGENIA PEREZ, request relief from this Court as follows:

A. For a declaration, pursuant to Code of Civil Procedure § 1060, that the following GHG regulations and standards, as set out in CARB's Scoping Plan, are unlawful, void, and of no force or effect:

- The Vehicle Miles Traveled ("VMT") mandate.
- The Net Zero CEQA threshold
- The CO2 per capita targets for local climate action plans for 2030 and 2050

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- The "Vibrant Communities" policies in Appendix C.

B. For a writ of mandate or peremptory writ issued under the seal of this Court pursuant to Code of Civil Procedure § 1094.5 or in the alternative § 1085, directing Respondents to set aside the foregoing provisions of the Scoping Plan and to refrain from issuing any further GHG standards or regulations that address the issues described in subsection A. above until such time as CARB has complied with the requirements of the APA, CEQA, and the requirements of the Due Process and Equal Protection clauses of the California and United States Constitutions;

C. For permanent injunctions restraining Respondents from issuing any further GHG standards or regulations that address the issues described in subsection A. above until such time as CARB has complied with the requirements of the APA, CEQA, and the requirements of the Due Process and Equal Protection clauses of the California and United States Constitutions;

D. For an award of their fees and costs, including reasonably attorneys' fees and expert costs, as authorized by Code of Civil Procedure § 1021.5, and 42 U.S. Code section 1988.

E. That this Court retain continuing jurisdiction over this matter until such time as the Court has determined that CARB has fully and properly complied with its Orders.

F. For such other and further relief as may be just and appropriate.

Dated November 21, 2018

Respectfully submitted,

HOLLAND & KNIGHT LLP

By: _____

Jennifer L. Hernandez
Charles L. Coleman III
Marne S. Sussman
David I. Holtzman

Attorneys for Plaintiffs/Petitioners
THE TWO HUNDRED, LETICIA RODRIGUEZ, TERESA MURILLO, GINA PEREZ, *et al.*

VERIFICATION

I, Jennifer L. Hernandez, am one of the attorneys for, and am a member of, THE TWO HUNDRED, an unincorporated association, Plaintiffs/Petitioners in this action. I am authorized to make this verification on behalf of THE TWO HUNDRED and its members named herein. I have read the foregoing FIRST AMENDED VERIFIED PETITION FOR WRIT OF MANDATE; COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF and know the contents thereof. I am informed and believe and on that ground allege that the matters stated therein are true. I verify the foregoing Petition and Complaint for the reason that Plaintiffs/Petitioners named in the Petition/Complaint are not present in the county where my office is located.

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

Executed this 21st day of November, 2018, at San Francisco, California.

JENNIFER L. HERNANDEZ

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PROOF OF SERVICE

THE TWO HUNDRED, et al. v. CALIFORNIA AIR RESOURCES BOARD, et al.
County of Fresno Superior Court, Case No. 18CECG01494

I, the undersigned, hereby declare that I am over the age of 18 years and not a party to the above-captioned action. My business address at Holland & Knight is 50 California Street, 28th Floor, San Francisco, California 94111-4624. On November 21, 2018, the following documents were served:

FIRST AMENDED VERIFIED PETITION FOR WRIT OF MANDATE; COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF (WITH EXHIBIT NOS. 1-3)

on all parties to this action at the following addresses in the following manner:

John S. Sasaki
California Department of Justice
Office of the Attorney General
300 S. Spring Street
Los Angeles, CA 90013-1230
Telephone: (213) 269-6336
Email: john.sasaki@doj.ca.gov

☒ **(BY ELECTRONIC MAIL)** I caused a true and correct scanned image (.PDF file) copy to be transmitted via the electronic mail transfer system in place at Holland & Knight, LLP, originating from the undersigned at 50 California Street, Suite 2800, San Francisco, California, to the addresses indicated above.

☒ **(BY MAIL)** I caused a true copy of each document(s) to be placed in a sealed envelope with first-class postage affixed and placed the envelope for collection. Mail is collected daily at my office and placed in a United States Postal Service collection box for pickup and delivery that same day.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own personal knowledge, and that I executed this document on November 21, 2018 at San Francisco, California.

Myrna M. Yee