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10/11-3

December 15, 2010

Mary Nichols, Chair  
James Goldstene, Executive Officer  
California Air Resources Board  
1001 "I" Street  
P.O. Box 2815  
Sacramento, CA 95812

Dear Chair Nichols and Mr. Goldstene:

We write on behalf of the undersigned organizations and our hundreds of thousands of California members in support of the regulations, with serious concern over the amendments proposed in October 2010 for the "truck and bus" and "off-road" regulations. We are cognizant of the need to provide some relief to diesel equipment and truck owners during the economic downturn. However, the rule changes as proposed go beyond what is necessary in the short term, and reduce near-term health benefits in the 2014-2017 timeframe. We therefore urge your consideration of the amendments recommended here in order to achieve the following:

1. Reduce localized impacts and retain the mid- and long-term benefits of the On- and Off-Road rules.
2. Eliminate loopholes to ensure all equipment is cleaned up by 2023.
3. Create at least a 20 percent SIP margin for 2014 and beyond due to uncertainty in economic projections, inventory uncertainties, and the absence of updated air quality modeling.

Our organizations have enthusiastically supported the slate of diesel clean up regulations adopted by CARB over the past decade. While it may be particularly difficult to enforce compliance with air quality regulations in the current recession, it is never a good time to be exposed to diesel pollution either. Every day, three times as many Californians die prematurely from the effects of particulate air pollution than in traffic accidents. Diesel pollution not only contains toxic particulates, but contains smog-forming nitrogen oxides and more than 40 other toxic chemicals. Hundreds of peer-reviewed studies from around the world have documented the health hazards of long-term exposure to diesel exhaust, particulate pollution and smog, including asthma and heart attacks, stunted lung growth in children, birth defects, more emergency room visits and higher death rates. At greatest risk are children, the elderly, people with asthma or other lung illnesses, and those who live in congested industrial areas including near ports or rail yards.

We recognize that the diesel emissions inventory for trucks, buses and off-road equipment has recently been adjusted downward due to reduced activity as well as methodological updates. However, the reduced diesel inventory does not diminish the need for reductions in communities overburdened by diesel pollution, nor can our lungs distinguish that emissions as officially accounted for are less. With the continuing tremendous health toll from diesel

pollution in California, all sectors of the diesel-based economy must do their share to clean up. In fact, Californians recently turned out overwhelmingly in support of health and clean air with the recent defeat of Proposition 23. We summarize our proposed amendments below and a more detailed explanation follows; we provide comments on the modifications to the Drayage Truck Rule as well. These amendments would enhance the public health protections, meet state SIP commitments, and provide economic relief to truck and off-road fleet owners.

**The On-Road Regulation should be improved through these moderate actions:**

1. **Require all 1994 - 2000 model year vehicles to install PM filters by 2012.**
2. **Replace all heavy-duty vehicles more than 20 years old beginning in 2012.**
3. **Require all trucks less than 26,000 pounds to retrofit, retire, or upgrade to a newer vehicle at 15 years of age.**
4. **Preserve School-bus clean-up provisions.**

**The Off-Road Regulation should be improved through these moderate actions:**

1. **Sunset the low-use threshold and return the threshold to 100 hours per year.**
2. **Require all equipment to employ a PM filter by the final compliance date of the regulation.**

Our coalition has actively engaged in the emission inventory update process. We appreciate the responsiveness of staff to new emissions data and the extensive efforts to make the necessary inventory adjustments in a short timeframe. We are concerned however, that the revised emissions inventory is being used in lieu of committed emissions reductions. Therefore, use of the full "margin" created by the newly reduced inventory to allow for slower compliance timeframes in the proposed amendments directly conflicts with the 2007 State Strategy's aggregate tonnage State Implementation Plan commitments for 2014.<sup>1</sup> Reliance on unenforceable inventory changes as "emissions reductions" does not comport with the Clean Air Act, which requires that the reductions necessary to demonstrate that attainment be *enforceable*. Even if ARB could use unenforceable changes in the inventory to satisfy its SIP commitment, in the event that economic growth is greater than ARB projections, or any other unforeseen vehicle or equipment usage patterns occur, failure to meet the 2014 aggregate tonnage targets would be all but inevitable. Further, current SIP commitments are based on air quality modeling done prior to significant changes in the off-road inventory. New air quality modeling needs to be performed to determine the actual impact of inventory changes, but changes are likely to show that additional reductions will be needed. For example, the 2008 Inventory in the South Coast estimates that off-road equipment accounts for more than twenty percent of total air basin NOx emissions.

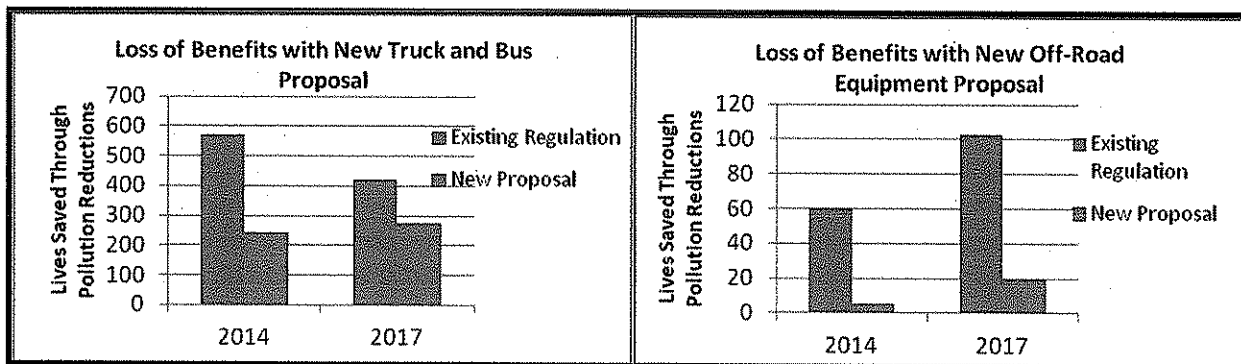
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<sup>1</sup> In the 2007 State Strategy, ARB did not commit to adopt any specific rule or strategy to attain the 1997 8-hour and Pm2.5 National Ambient Air Quality Standards. Rather, ARB committed to achieve a tonnage reduction of NOx, VOC, and PM2.5 by certain years, with the individual rules and strategies to achieve those "aggregate" targets to be at ARB's discretion. By commenting here, the signatories to this letter do not concede that ARB may rely on aggregate tonnage commitments to comply with Clean Air Act requirements.

While the ARB analysis indicates that overall emission reductions from the rules with proposed changes combined with the economic downturn are similar to the original rules, the health impacts are most certainly not. Communities most impacted by diesel pollution from trucks will have to wait as many as seven years longer to see the types of emission reductions that were originally approved by the ARB. We are especially concerned that toxic hotspots of diesel pollution throughout the state will receive little relief in the short term. Compared to the existing regulations, for example, emissions of diesel soot under the new proposal would be fifty percent higher in 2014.

Many areas that are most impacted by truck pollution are the very environmental justice communities that we seek to protect, as they are already overburdened by pollution. Hundreds of thousands of Californians live within one quarter mile of a major freeway carrying diesel trucks; most of these communities are comprised of a much higher percentage of minorities and a greater percent of families that fall below the federal Department of Housing and Urban Development designation for Very Low Income. For example, in Richmond, families living near freeways are more than 70 percent more likely to be non-white and almost 50 percent more likely to be very low income compared to the average in Contra Costa County. Thus, it is of paramount importance to offer these areas immediate relief from the severe pollution levels that they experience. Please see the attached maps at the end of this letter.

In fact, after accounting for the adjustments to the emissions inventory due to the recession and other factors, the loss of near term health benefits from new proposals translate to roughly 380 fewer lives saved in 2014. That means that compared to the existing regulation, the new proposals would result in a loss of health benefits in 2014 of more than 50% for trucks and 90% from off-road equipment. The loss of health benefits is also significant in 2017.



The uncertainties about future economic growth, the inability to enforce changes in the emission inventory, and the significant negative impacts to the most impacted communities argues for a more cautious approach that leaves no room for eroding the Board's commitment in the 2007 State Strategy. The rule amendments should focus on providing short-term economic relief over the next couple of years. Short term relief should not rollback requirements up to ten years or longer at the expense of public health benefits. The following proposed strengthen amendments would ensure long-term benefits.

### On-Road Rule

- 1. Proposal: Require all model year 1994-2000 heavy-duty vehicles with a GVWR of greater than 26,000 lbs to install PM filters by 2012, or upgrade to newer models. Allow all retrofitted vehicles eight years before compliance with 2010 standards:** Direct diesel PM emissions are responsible for the high cancer risks experienced by communities near truck traffic. Cost-effective particulate retrofits are widely available and have been proven a successful technology for these trucks. According to ARB estimates, model year 1994-2000 trucks emit 7 times more PM per mile than ones equipped with a particulate filter.<sup>2</sup> Allowing retrofits an eight year life as in the current proposal would allow truck owners to hold on to these vehicles, while providing benefits for impacted communities where some of the oldest trucks travel most.
- 2. Proposal: Replace all heavy-duty vehicles more than 20 years old beginning in 2012.** The current proposal allows uncontrolled pre-1994 model year trucks to continue operating until 2015. A mandatory 20 year retirement age would remove the oldest vehicles from use, giving owners a choice to either retrofit or upgrade to a newer model year.
- 3. Proposal: Require all trucks less than 26,000 pounds to retrofit, retire or upgrade to a newer vehicle at 15 years of age:** These trucks, delivery vehicles, tow trucks, and others operate primarily in high density, urban areas where exposure to diesel emissions is greatest. The proposal should be modified to begin retiring medium duty trucks at 15 years of age, while providing an option to retrofit to extend the life of the truck.
- 4. Proposal: Preserve the original clean up requirements for all school buses, large and small (less than 26,000 pounds), with a commitment to ensure funding where necessary:** We are concerned that there is pressure to delay or relax clean up requirements for school buses despite the fact that millions of dollars of funding has been made available to school districts across the state. According to numerous studies, including one from this agency, children can be exposed to very hazardous levels of diesel pollution on uncontrolled school buses, increasing cancer risks, and incidence of other health impacts such as asthma. The amendments proposing delayed compliance for short buses (those under 26,000 pounds) should not be considered on the simple grounds that all children should be provided safe transportation to school, whether they ride large or small buses.

### Off-Road Rule

- 1. Proposal: Limit the low-use provision to 10 percent of a fleets' equipment with a subsequent reduction to 5 percent by 2020.** The proposal permanently exempts equipment operated 200 hours per year or less from all requirements. While 200 hours is only five full work weeks, off-road equipment is rarely fully utilized. Based on CARB's

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<sup>2</sup> Based on .81 grams per mile for heavy-duty trucks model years 1994-2000 and .11 grams/mile heavy-duty trucks model year 2007 and newer. Appendix A, *Final Regulation Order To Reduce Emissions Of Diesel Particulate Matter, Oxides Of Nitrogen, And Other Pollutants From In-Use Heavy-Duty Diesel-Fueled Vehicles*

estimates of equipment activity, the average annual hours of use for across all categories of off-road equipment is 500 hours per year. The four largest categories of equipment, representing 40% of the horsepower in the state, operate an average of 480 hours per year.<sup>3</sup>

Fleets could avoid upgrading to new equipment by employing two low-use pieces of equipment which could operate indefinitely without being subject to clean-up requirements. The full impact of the low-use threshold loop-hole is unknown. But, given that the low-use threshold is set at nearly half of the average hours of use for all equipment, the emissions impact of this loophole could be extremely high and could erode many of the benefits of the rule.

For example, a piece of equipment operating under the low-use threshold of 200 hours per year would be allowed to emit 5 to more than 20 times the amount of particulate pollution of a Tier 4 piece of equipment, indefinitely.<sup>4</sup>

To prevent the abuse of the low-use exemption and to ensure that emission reductions expected from the rule actually occur, a 10 percent limit on low-use equipment should be set. This would continue to provide fleets flexibility while preventing circumvention of clean-up requirements. The limit should decrease to 5 percent in 2020 to help ensure that the oldest, dirtiest equipment is taken out of service.

- 2. Proposal: Require all equipment to employ a PM filter by the final compliance date of the regulation:** The rule modifications as proposed lower the fleet average emissions targets over the life of the regulation and eliminate all PM reduction requirements. As a result, fleets meeting the final compliance NOx fleet average could continue operating more than half of their equipment without particulate filters.<sup>5</sup> All new off-road equipment will come equipped with particulate filters by model 2013 and retrofits are available for some types of equipment. The regulation should require that all equipment be filter equipped, either through retrofit or new equipment purchases, by the final compliance date for each fleet size. This will ensure that the best available control technology is being used to lower exposure to toxic diesel emissions.

### **Port Drayage Rule**

The drayage truck rule is a pioneering effort to clean the air around our State's ports and rail yards. From San Diego to Redding, communities adjacent to ports and rail yards are burdened with the devastating impacts of diesel truck pollution. Phase 1 of the rule has provided important, initial reductions in diesel PM. However, if the Phase 2 ban is eliminated, these gains will be jeopardized and NOx pollution will persist. We strongly urge you to maintain the much-

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<sup>3</sup> Table D-9 ISOR Appendix D.

<sup>4</sup> Based on PM emissions factors for Tier 0 through Tier 4 175 horsepower equipment in Attachment D of ISOR appendix D.

<sup>5</sup> To meet the final fleet average NOx requirements, approximately 50% of non-low-use equipment could be Tier 3 (without filters) if the remainder are Tier 4. The low-use provision would allow an unspecified amount of additional equipment to remain without filters.

needed Phase 2 deadline requiring all drayage trucks to meet EPA 2007 engine standards by 2014. Community health is at risk if this deadline is eliminated.

We would like to applaud the proposed changes to the drayage truck regulation regarding the practice called "dray-off" (the use of non-compliant trucks to shuttle containers to and from staging locations very close to port terminals) and inclusion of Class 7 trucks. Maintaining the Phase 2 deadline of the regulation, ending "dray-offs" and including Class 7 trucks ensures that all drayage trucks will meet high clean air standards as originally intended. We appreciate the responsiveness to these community concerns.

We appreciate the hard work of staff, as well as board members to adjust these important regulations to changing circumstances while making an effort to maintain health benefits. We are very concerned, however, that the current proposal falls significantly short of that goal. The current proposal makes sweeping changes that drastically reduce the cost to equipment owners yet significantly reduce the health benefits as well.

Thank you for your consideration of our proposed strengthening amendments to protect public health, meet state SIP commitments, and provide economic relief to truck and off-road fleet owners.

Sincerely,

Bonnie Holmes-Gen  
**American Lung Association in California**

Karen G. Pierce  
**Bayview Hunters Point Community Advocates**

Andy Katz  
**Breathe California**

Betsy Reifsnider  
**Catholic Charities of the Stockton Diocese**

Christine G. Cordero  
**Center for Environmental Health**

Brent Newell  
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Jesse N. Marquez  
**Coalition for a Safe Environment**

Nidia Bautista  
**Coalition for Clean Air**

Anna Yun Lee  
**Communities for a Better Environment**

Gisele Fong  
**Communities for Clean Ports**

Jocelyn Vivar  
**East Yard Communities for Environmental Justice**

Joy Williams  
**Environmental Health Coalition**

Sarah Sharpe  
**Fresno Metro Ministry**

Gabrielle Weeks  
**Long Beach Coalition for a Safe Environment**

Kevin D. Hamilton, RRT, RCP  
**Medical Advocates for Health Air**

Diane Bailey  
**Natural Resources Defense Council**

Anne Kelsey Lamb  
**Regional Asthma Management and Prevention  
Community Action to Fight Asthma**

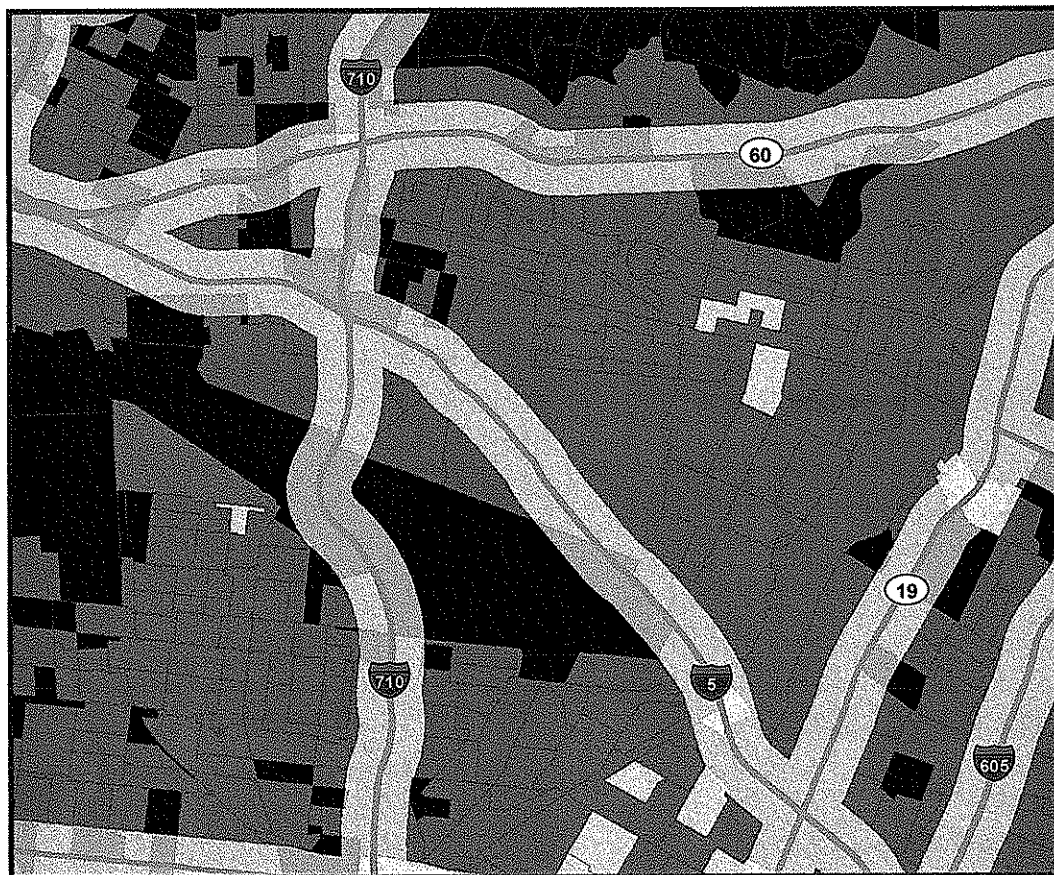
Jill Ratner  
**Rose Foundation for Communities and the Environment**

Bill Magavern  
**Sierra Club California**

Don Anair  
**Union of Concerned Scientists**

Brian Beveridge  
**West Oakland Environmental Indicators Project**

# Freeway-impacted Communities in Commerce, CA



## Legend

— highways

buffer distance

□ 0.25 mile

% nonwhite

□ 0 - 33%

■ 34 - 66%

■ 67 - 100%

■ No Data

% families with income below \$35,000

□ 0 - 33%

■ 34 - 66%

■ 67 - 100%

■ No Data



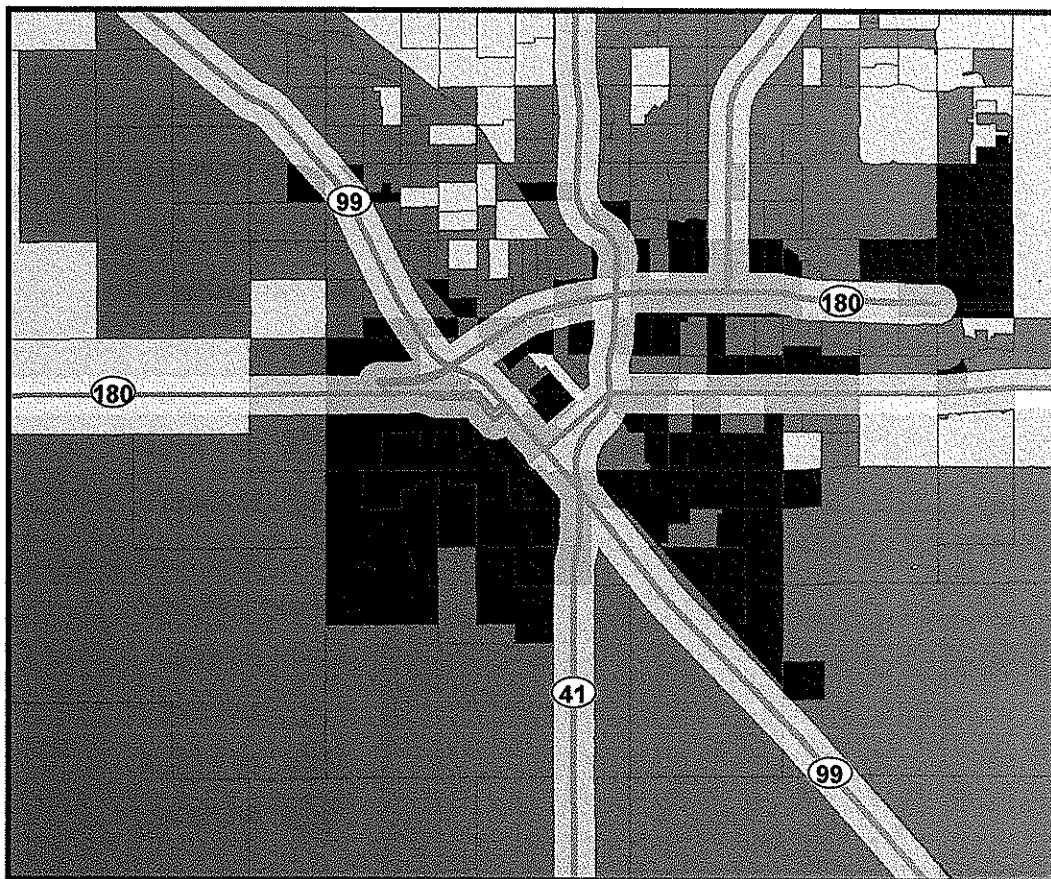
Population (2000)	
Freeways	165,763
County	9,519,338
% Non-White	
Freeways	56%
County	51%
% Families Income < 35K	
Freeways	48%
County	38%

0 1 Miles





# Freeway-impacted Communities in Fresno, CA



## Legend

— highways

buffer distance

□ 0.25 mile

% nonwhite

□ 0 - 33%

■ 34 - 66%

■ 67 - 100%

■ No Data

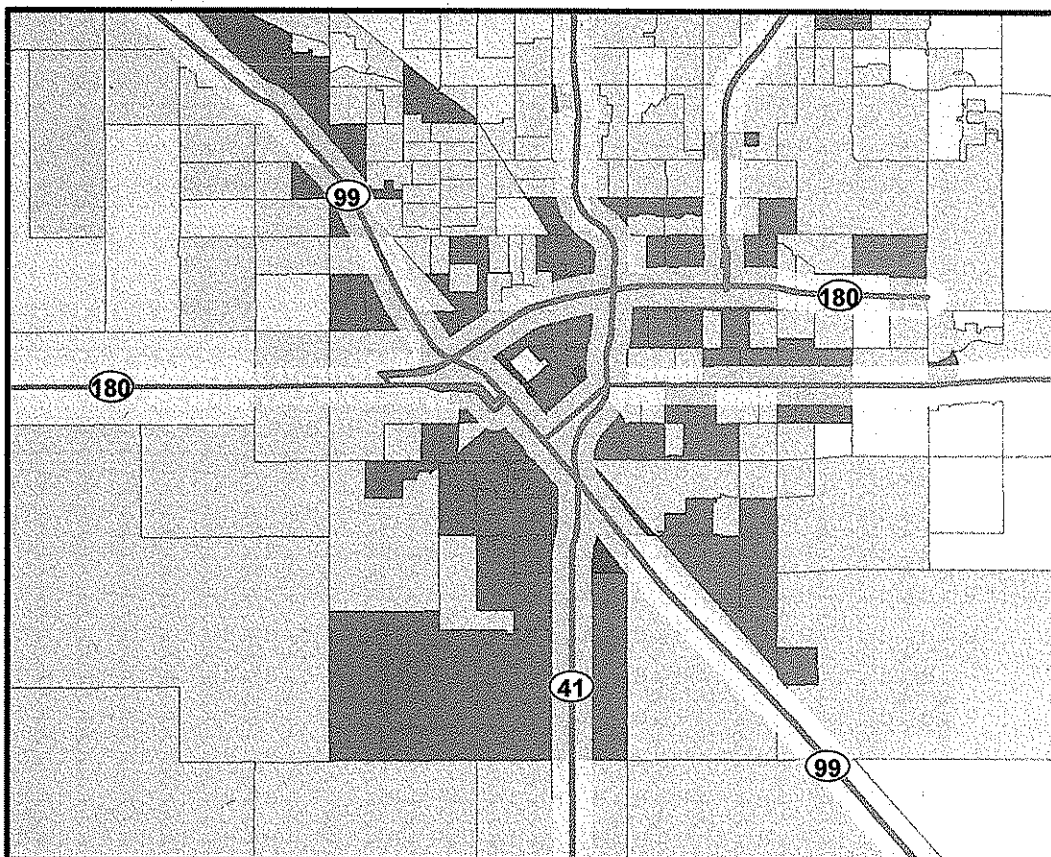
% families with income below \$35,000

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■ No Data

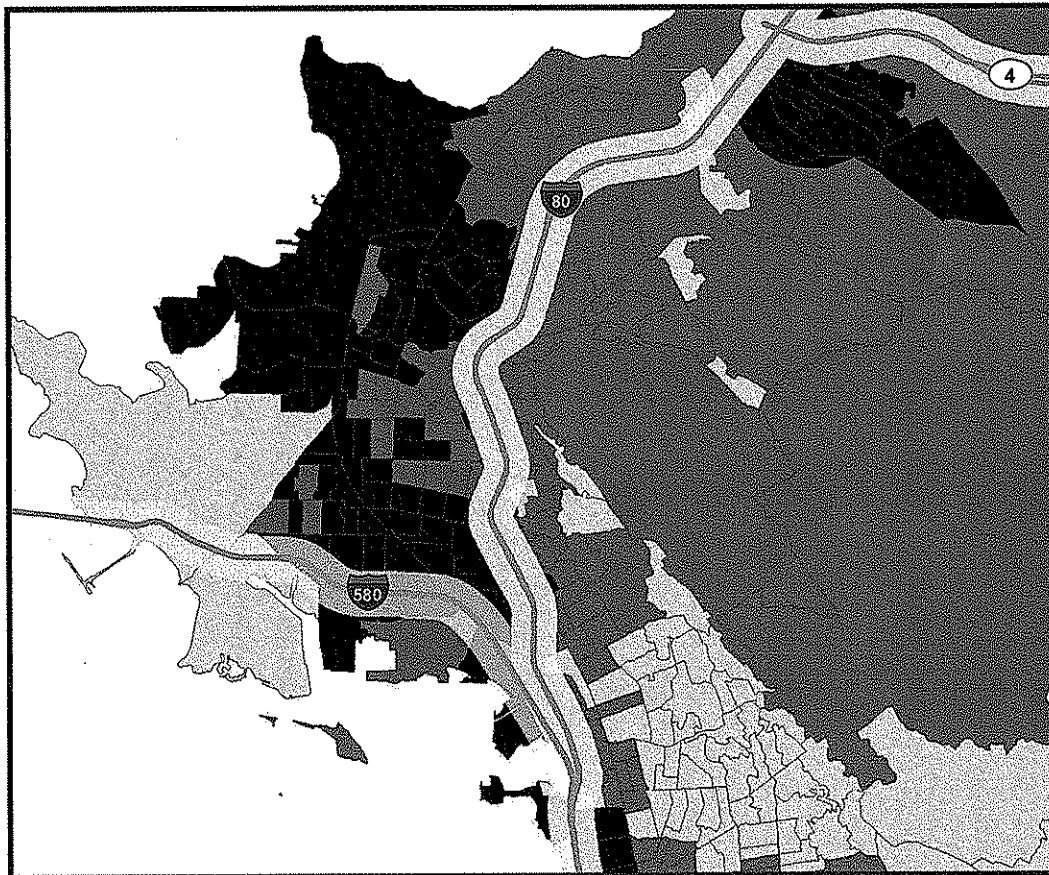


Population (2000)	
Freeways	86,122
County	799,407
% Non-White	
Freeways	61%
County	46%
% Families Income < 35K	
Freeways	64%
County	46%

0 1 2 Miles



# Freeway-impacted Communities in Richmond, CA



## Legend

— highways

buffer distance

□ 0.25 mile

% nonwhite

□ 0 - 33%

■ 34 - 66%

■ 67 - 100%

■ No Data

% families with income below \$35,000

□ 0 - 33%

■ 34 - 66%

■ 67 - 100%

■ No Data



Population (2000)	
Freeways	45,681
County	948,816
% Non-White	
Freeways	61%
County	35%
% Families Income < 35K	
Freeways	27%
County	18%

0 1 2 Miles

