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15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
16 **COUNTY OF SAN DIEGO, CENTRAL DIVISION**

18 CLEVELAND NATIONAL FOREST  
FOUNDATION and COASTAL  
19 ENVIRONMENTAL RIGHTS FOUNDATION,

20 Petitioners and Plaintiffs,

21 v.

22 COUNTY OF SAN DIEGO; BOARD OF  
SUPERVISORS OF COUNTY OF SAN  
23 DIEGO; COUNTY OF SAN DIEGO  
PLANNING AND DEVELOPMENT  
24 SERVICES; and DOES 1-10, inclusive,

25 Respondents and Defendants.

26 DOES 11-40, inclusive,

27 Real Parties in Interest.  
28

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego

**09/04/2020** at 01:17:03 PM

Clerk of the Superior Court  
By Taylor Crandall, Deputy Clerk

Case No. 37-2020-00031320-CU-WMA-CTL

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

Code Civ. Proc. §§ 1060, 1085, 1094.5  
Pub. Res. Code 21000 et seq. ("CEQA")

Filed Concurrently with Notice of  
Election to Prepare Administrative  
Record

1 **INTRODUCTION**

2 1. This action challenges the June 24, 2020 decision of the County of San Diego, its  
3 Board of Supervisors, and its Planning and Development Services department (collectively,  
4 “County” or “Respondents”) to approve a Transportation Study Guide and associated thresholds  
5 of significance for evaluation of transportation impacts (the “SB 743 Implementation Project” or  
6 “Project”) under the California Environmental Quality Act (“CEQA”).

7 2. The Legislature enacted Senate Bill 743 in 2013 in order to change the way the  
8 transportation impacts of development are addressed under CEQA. After SB 743, rather than  
9 focusing on measures of traffic congestion and delay, agencies must address vehicle miles  
10 traveled (“VMT”) or other measures that better elucidate and reduce the climate, air quality, and  
11 other impacts of vehicle travel.

12 3. SB 743 supports California’s broader climate goals by ensuring that analysis and  
13 mitigation of environmental impacts under CEQA will aid in reducing greenhouse gas emissions  
14 from the transportation sector, the state’s largest source of climate pollution. Indeed, the  
15 California Air Resources Board has found that without significant reductions in VMT, achieving  
16 California’s climate goals will be impossible.

17 4. The SB 743 Implementation Project runs directly counter to the state legislation it  
18 purports to implement. Rather than require analysis of future projects’ contribution to VMT in  
19 accordance with SB 743, the Project will create sweeping exemptions from VMT analysis  
20 requirements. And rather than reduce greenhouse gas emissions and other environmental  
21 impacts from vehicle travel as the Legislature directed, the Project will facilitate *increased*  
22 greenhouse gas emissions and other adverse transportation-related effects from future  
23 development projects without any disclosure, analysis, or mitigation.

24 5. Under CEQA, “thresholds of significance” are intended to aid agencies in  
25 determining whether particular environmental impacts of a project should be considered  
26 “significant,” and thus subject to heightened environmental analysis, mitigation, and avoidance  
27 requirements. The County’s VMT thresholds, in contrast, are *not* designed to help determine  
28 whether environmental impacts from transportation are significant under CEQA. Rather, the

1 County’s thresholds appear to have been designed to *exempt* as much County development as  
2 possible from any requirement to evaluate or mitigate transportation impacts.

3 6. The County created this massive and unlawful exemption from CEQA’s and SB  
4 743’s requirements in two ways.

5 7. First, the County established a threshold of significance under which projects with  
6 VMT 15% below the existing regional average would be considered to have less-than-  
7 significant impacts. But the County manipulated the average regional baseline against which a  
8 project’s VMT would be compared. Rather than using average VMT across the highly  
9 connected, integrated San Diego region as expert state technical guidance recommended, the  
10 County instead used a much higher average VMT baseline derived exclusively from largely  
11 rural unincorporated areas. The County thus inflated the baseline against which the 15%  
12 reduction threshold must be compared. Because the baseline is so much higher, future projects  
13 with higher VMT will fall below the County’s thresholds—and those projects’ transportation-  
14 related impacts will never be analyzed or mitigated under CEQA.

15 8. Second, the County adopted an unsupported “screening threshold” for purportedly  
16 small projects. Under this threshold, the County concluded that *all* of the residential  
17 development in unincorporated rural and semi-rural areas—areas where vehicle trips reasonably  
18 could be expected to be the longest—would be “small” and thus exempt from VMT analysis and  
19 mitigation.

20 9. Together, the County’s thresholds could exempt *the vast majority* of the potential  
21 residential units that could be developed under the County’s General Plan from any  
22 transportation impacts analysis whatsoever.

23 10. Adding insult to injury, the County refused to analyze the environmental  
24 consequences of adopting these sweeping exemptions. Instead, the County found the SB 743  
25 Implementation Project *itself* exempt from CEQA, based on a series of dubious rationalizations  
26 that lack legal and evidentiary support.

27 11. The County’s actions not only violate CEQA, but also directly undermine the clear  
28 intent and direction of the Legislature in SB 743 to reduce greenhouse gas emissions and other

1 impacts of vehicle travel. The SB 743 Implementation Project is contrary to law and  
2 unsupported by substantial evidence. Its adoption was a clear abuse of discretion and must be set  
3 aside.

#### 4 PARTIES

5 12. Petitioner and Plaintiff Cleveland National Forest Foundation (“CNFF”) is a  
6 nonprofit corporation dedicated to preserving the plants, animals and other natural resources of  
7 Southern California mountains by protecting the land and water they need to survive. CNFF is  
8 committed to sustainable regional land use planning in San Diego County in order to stem the  
9 tide of urban encroachment on wildlands. Members of CNFF are residents and taxpayers of San  
10 Diego County who will be adversely affected by the SB 743 Implementation Project’s  
11 significant environmental impacts. CNFF submitted written comments to the County objecting  
12 to and commenting on the SB 743 Implementation Project and related approvals.

13 13. Petitioner and Plaintiff Coastal Environmental Rights Foundation (“CERF”) is a  
14 non-profit public benefit corporation organized under the laws of the State of California with its  
15 office located in Encinitas, California. CERF was founded by surfers in North San Diego  
16 County and is active throughout California’s coastal communities. CERF was established to  
17 advocate for the protection and enhancement of coastal natural resources and the quality of life  
18 for coastal residents. Members of CERF are residents and taxpayers of San Diego County who  
19 will be adversely affected by the SB 743 Implementation Project’s significant environmental  
20 impacts. CERF submitted written comments to the County objecting to and commenting on the  
21 SB 743 Implementation Project and related approvals.

22 14. The interests that CNFF and CERF (together, “Petitioners”) seek to further in this  
23 action are within the goals and purposes of these organizations. Petitioners and their members  
24 have a direct and beneficial interest in the County’s compliance with laws bearing on the SB 743  
25 Implementation Project. These interests will be directly and adversely affected by the Project,  
26 which violates the law as set forth in this Petition, and which would cause substantial harm to  
27 Petitioners’ members, the natural environment, public health, and the quality of life in the  
28 surrounding community. The maintenance and prosecution of this action will confer a

1 substantial benefit on the public by protecting the public from the environmental and other  
2 harms alleged herein.

3 15. Respondent and Defendant County of San Diego is, and at all times herein  
4 mentioned was, a political subdivision of the State of California responsible for regulating and  
5 controlling land use within the County, including but not limited to implementing and  
6 complying with the provisions of CEQA as well as other state and local laws. The County is the  
7 “lead agency” for the purposes of Public Resources Code section 21067, with principal  
8 responsibility for conducting environmental review of proposed actions. The County has a duty  
9 to comply with CEQA and state law.

10 16. Respondent and Defendant Board of Supervisors of the County of San Diego is,  
11 and at all times herein mentioned was, the duly elected decision-making body of Respondent  
12 County. As the decision-making body, the Board of Supervisors was charged with  
13 responsibilities under CEQA for conducting a proper review of the proposed action’s  
14 environmental impacts and granting the various approvals necessary for the Project. The Board  
15 also is and was responsible for implementing and complying with CEQA, including the  
16 provisions of SB 743, in connection with land use planning and development projects occurring  
17 in the County. The Board and its members are sued in their official capacities.

18 17. Respondent and Defendant County of San Diego Planning and Development  
19 Services (“PDS”) is listed as the “Project Applicant” on the County’s July 9, 2020 Notice of  
20 Exemption related to the Project. Based on information found at a website maintained by PDS,  
21 Petitioners are informed and believe, and on that basis allege, that PDS is “responsible for long  
22 range land use planning, including the County General Plan and Zoning Ordinance, which  
23 determine how our communities will grow. The department analyzes privately initiated land use  
24 projects to ensure compliance with land use regulations, and advises the Board of Supervisors  
25 and Planning Commission on the projects.”<sup>1</sup>

26 \_\_\_\_\_  
27 <sup>1</sup> County of San Diego, Planning & Development Services, “About Planning & Development  
28 Services,” at <https://www.sandiegocounty.gov/content/sdc/pds/AboutUs.html> (visited August  
29, 2020).

1 18. Petitioners are unaware of the true names and capacities of Respondents and  
2 Defendants Does 1 through 10 and sue such respondents by fictitious names. Petitioners are  
3 informed and believe, and on that basis allege, the fictitiously named respondents are also  
4 responsible for the actions described in this Petition. When the true identities and capacities of  
5 these respondents have been determined, Petitioners will amend this petition, with leave of the  
6 Court if necessary, to insert such identities and capacities.

7 19. Petitioners are unaware of the true names and capacities, whether individual,  
8 corporate, associate, or otherwise, of Real Parties in Interest Doe 11 through Doe 40, inclusive,  
9 and therefore sue said Real Parties in Interest under fictional names. Petitioners allege, upon  
10 information and belief, that each fictionally named Real Party in Interest is responsible in some  
11 manner for committing the acts upon which this action is based or has material interests affected  
12 by the Project or by the County's actions with respect to the Project. Petitioners will amend this  
13 Petition to show their true names and capacities if and when the same have been ascertained.

14 **JURISDICTION AND VENUE**

15 20. Pursuant to Code of Civil Procedure sections 526, 527, 1060, 1085, 1087, and  
16 1094.5, and Public Resources Code sections 21168, 21168.5 and 21168.9, the San Diego County  
17 Superior Court has initial jurisdiction to issue appropriate injunctive and declaratory relief and  
18 to issue a writ of mandate to set aside Respondents' decision to approve the SB 743  
19 Implementation Project and make related CEQA findings.

20 21. Venue for this action properly lies in the Superior Court for the State of California  
21 in and for the County of San Diego pursuant to Code of Civil Procedure section 394. The  
22 activities authorized by Respondents will occur in San Diego County.

23 22. Venue for this action properly lies in the Central Division of the Superior Court  
24 for the State of California for the County of San Diego pursuant to Local Rule 1.2.2(E) because  
25 this petition pleads a California Environmental Quality Act claim, Respondents County of San  
26 Diego and Board of Supervisors of County of San Diego are located in zip code 92101, and  
27  
28

1 Respondent PDS is located in zip code 92123.<sup>2</sup>

2 23. Petitioners have performed any and all conditions precedent to filing this action  
3 and have exhausted any and all available administrative remedies to the extent possible and  
4 required by law. Petitioners and their members submitted comments objecting to approval of the  
5 Project based on the absence of evidentiary support for the SB 743 Implementation Project, the  
6 County's improper findings that the Project was exempt from CEQA, and the Project's conflicts  
7 with state law.

8 24. Respondents have taken final agency actions with respect to approving the SB 743  
9 Implementation Project and making related CEQA findings. Respondents have a duty to comply  
10 with applicable state laws, including but not limited to CEQA, prior to undertaking the  
11 discretionary approvals at issue in this lawsuit.

12 25. On September 2, 2020, Petitioners complied with Public Resources Code section  
13 21167.5 by emailing and mailing to Respondents a letter stating that Petitioners planned to file a  
14 Petition for Writ of Mandate seeking to invalidate Respondents' approval of the SB 743  
15 Implementation Project. Attached hereto as Exhibit A is a true and correct copy of this letter.

16 26. On September 4, 2020, Petitioners will comply with Public Resources Code  
17 section 21167.7 and Code of Civil Procedure section 388 by furnishing the Attorney General of  
18 the State of California with a copy of the Petition. Attached hereto as Exhibit B is a true and  
19 correct copy of the letter transmitting the Petition to the Attorney General.

20 27. Pursuant to Public Resources Code section 21167.6(b)(2), Petitioners elect to  
21 prepare the record of proceedings in this action. Concurrently with this Petition, Petitioners will  
22 file a notice of election to prepare the administrative record.

23 28. Petitioners have no plain, speedy, or adequate remedy in the course of ordinary  
24 law unless this Court grants the requested writ of mandate to require Respondents to set aside  
25 their approval of the Project. In the absence of such remedies, Respondents' approvals will

26 \_\_\_\_\_  
27 <sup>2</sup> See Superior Court of California, County of San Diego, Civil Division, "Where to File," at  
28 [http://www.sdcourt.ca.gov/portal/page?\\_pageid=55,1555635&\\_dad=portal&\\_schema=PORTAL](http://www.sdcourt.ca.gov/portal/page?_pageid=55,1555635&_dad=portal&_schema=PORTAL)

1 remain in effect in violation of State law, and Petitioners and their members will be irreparably  
2 harmed. No money damages or legal remedy could adequately compensate Petitioners and their  
3 members for that harm.

4 29. This petition is timely filed pursuant to Public Resources Code section 21167(d)  
5 and Judicial Council Emergency Rule 9 (as amended May 29, 2020).

6 **STATEMENT OF FACTS**

7 **I. SB 743 and Vehicle Miles Traveled**

8 30. The County’s action purports to implement—but fails to comply with—Senate  
9 Bill 743 (“SB 743”), codified at Public Resources Code section 21099.

10 31. SB 743 directed the Office of Planning and Research to prepare and develop, and  
11 the California Natural Resources Agency to certify and adopt, guidelines establishing criteria for  
12 determining the significance of transportation impacts under CEQA. The legislation provided  
13 that transportation impacts should be evaluated in terms of vehicle miles traveled (“VMT”) or  
14 similar metrics, rather than “levels of service” or other measures of vehicular capacity or  
15 roadway congestion. (See Pub. Resources Code § 21099(b)(1), (2).)

16 32. The Legislature specifically directed that transportation significance criteria “shall  
17 promote the reduction of greenhouse gas emissions, the development of multimodal  
18 transportation networks, and a diversity of land uses.” (Pub. Resources Code § 21099(b).)

19 33. The Office of Planning and Research developed guidelines and criteria in response  
20 to SB 743 and transmitted the guidelines to the California Natural Resources Agency. In late  
21 2018, the California Natural Resources Agency promulgated those guidelines and criteria by  
22 adding a new section 15064.3 to the CEQA Guidelines.<sup>3</sup>

23 34. Under SB 743, local agencies like the County retain authority to establish their  
24 own thresholds of significance for analyzing VMT, but only to the extent that those thresholds  
25 are “more protective of the environment” than the state guidelines require. (Pub. Resources  
26 Code § 21099(e).)

27 <sup>3</sup> References to the “CEQA Guidelines” are to the California Code of Regulations, title 14,  
28 section 15000 et seq.



1           35.     In December 2018, contemporaneously with the promulgation of CEQA  
2 Guidelines section 15064.3, the Office of Planning and Research published a document entitled  
3 “Technical Advisory on Evaluating Transportation Impacts in CEQA” (“Technical Advisory”).  
4 The Technical Advisory provided “technical recommendations regarding assessment of VMT,  
5 thresholds of significance, and mitigation measures.” (Technical Advisory at 1.)

6           36.     The Technical Advisory explained that VMT analysis and mitigation are critical to  
7 achievement of California’s legislatively mandated targets for greenhouse gas emissions  
8 reduction. Indeed, “it will not be possible to achieve the State’s 2030 and post-2030 emissions  
9 goals without reducing VMT growth.” (Technical Advisory at 2.)

10          37.     The Technical Advisory further explained that necessary reductions in VMT can  
11 occur under CEQA through identification of significant VMT impacts and adoption of  
12 mitigation measures to reduce VMT. (Technical Advisory at 2-3.)

13          38.     The Technical Advisory stressed that in evaluating VMT, “[l]ead agencies should  
14 not truncate any VMT analysis because of jurisdictional or other boundaries, for example, by  
15 failing to count the portion of a trip that falls outside the jurisdiction or by discounting the VMT  
16 from a trip that crosses a jurisdictional boundary.” (Technical Advisory at 6.)

17          39.     The Technical Advisory recommended thresholds of significance for use in  
18 determining whether specific projects may have significant transportation impacts, and thus  
19 require VMT mitigation, under CEQA. Specifically, the Office of Planning and Research  
20 “recommend[ed] using quantitative VMT thresholds linked to [greenhouse gas] reduction targets  
21 when methods exist to do so.” (Technical Advisory at 8.)

22          40.     Informed by a quantitative assessment by the California Air Resources Board  
23 evaluating the degree of VMT reduction necessary to meet the State’s long-term climate goals,  
24 the Technical Advisory concluded that a project with a per capita or per employee VMT that is  
25 15% below that of existing development may reasonably be found not to have a significant  
26 transportation impact. (Technical Advisory at 10-12, 15.)

27          41.     The Technical Advisory concluded that “existing” VMT “may be measured as  
28 regional VMT per capita or as city VMT per capita.” (Technical Advisory at 15.)

1 42. The Technical Advisory used the term “region” synonymously with the “areas”  
2 subject to metropolitan planning organization jurisdiction. (Technical Advisory at 15.)

3 43. In San Diego County, the relevant metropolitan planning organization is the San  
4 Diego Association of Governments (“SANDAG”), and the relevant “region” is the San Diego  
5 region encompassed by SANDAG’s regional transportation plan.

6 44. For residential projects in unincorporated areas, the Technical Advisory stated that  
7 the project’s VMT can be compared to either “(1) the region’s VMT per capita, or (2) the  
8 aggregate population-weighted VMT per capita of all cities in the region.” (Technical Advisory  
9 at 15.)

10 45. The Technical Advisory also discussed a possible “screening threshold” for  
11 “smaller projects,” under which projects generating fewer than 110 average daily trips (“ADT”)  
12 could be assumed to cause a less-than-significant transportation impact. (Technical Advisory at  
13 12.) The Technical Advisory derived this screening threshold from a CEQA categorical  
14 exemption for “existing facilities, including additions to existing structures of up to 10,000  
15 square feet, so long as the project is in an area where public infrastructure is available to allow  
16 for maximum planned development and the project is not in an environmentally sensitive area.”  
17 (Technical Advisory at 12 & fn. 19.)

18 46. The Technical Advisory identified a range of potentially feasible mitigation  
19 measures and alternatives that could be adopted to reduce significant VMT impacts from  
20 development projects. (Technical Advisory at 26-28.)

21 47. Although local agencies could “elect to be governed by” its provisions at any time  
22 after promulgation, CEQA Guidelines section 15064.3 took effect statewide on July 1, 2020,  
23 and applies to all environmental documents set out for public review after that date. (CEQA  
24 Guidelines §§ 15007(c), 15064.3(c).)

## 25 **II. The County’s Review and Approval of the SB 743 Implementation Project**

26 48. On May 7, 2020, the County issued a “Notice of Intent to Adopt Updated  
27 Transportation Study Guide,” along with a draft version of proposed “Transportation Study  
28 Guidelines.” According to the Notice of Intent, the draft “Guide” included “options for the

1 Board of Supervisors to consider related to: 1) the geography to use in calculating total/average  
2 VMT for the unincorporated county; 2) criteria to use in determining which projects must  
3 conduct detailed VMT analysis; and, 3) the VMT threshold to use in determining significance.”  
4 The Notice of Intent stated that public comments on the Transportation Study Guidelines would  
5 be accepted through June 8, 2020.

6 **A. The Planning Commission’s Consideration of the Project**

7 49. On May 15, 2020, the San Diego County Planning Commission considered the  
8 proposed Transportation Study Guidelines. According to the Planning Commission’s agenda,  
9 planning staff requested that the Planning Commission “make recommendations to the Board of  
10 Supervisors on a range of options.”

11 50. County staff prepared a “Hearing Report” in connection with the May 15, 2020  
12 agenda item. A copy of the proposed Draft Transportation Study Guidelines was attached as an  
13 exhibit to the Hearing Report.

14 51. The Hearing Report explained that staff proposed “transitioning from [level of  
15 service analysis] to VMT as a methodology for CEQA analysis.” (Hearing Report at 2.)

16 52. The Hearing Report identified “three policy decisions . . . that require Board  
17 direction to implement SB 743 and establish VMT as the methodology for CEQA transportation  
18 analysis”: (1) establishment of a “geographic boundary” to serve as the “average baseline VMT”  
19 for comparison to estimated VMT from particular projects; (2) establishment of “project  
20 analysis screening criteria for which projects must conduct a VMT analysis”; and (3)  
21 establishment of a “Level of Significant Impact (Significance Threshold), which is the amount  
22 of VMT created by a project that will be considered to have a transportation impact.” (Hearing  
23 Report at 9.)

24 53. In connection with the first policy decision—establishment of a “geographic  
25 boundary”—the Hearing Report asserted that “[t]he State does not provide a recommended  
26 geography to use, and jurisdictions, like the County, have discretion in defining the geography  
27 to use in calculating average baseline VMT.” (Hearing Report at 11.)

28 54. The Draft Transportation Study Guidelines attached to the Hearing Report, in

1 contrast, acknowledged that the Technical Advisory discussed using the “region” as an  
2 “appropriate geography to establish average VMT and thresholds.” (Draft Transportation Study  
3 Guidelines, Appendix F at F-2.) The Draft Transportation Study Guidelines further  
4 acknowledged that the term “region,” as used in the Technical Advisory, “refer[s] to a  
5 [metropolitan planning organization] region as a basis for determining average VMT.”

6 55. The Hearing Report identified three different options for “geographic boundaries”  
7 to be used as possible “baselines” for VMT analysis: “the San Diego region as a whole,” the  
8 unincorporated area of the County, and “smaller subareas within the unincorporated area.”  
9 (Hearing Report at 11.) The Hearing Report designated these options as Option A, Option B,  
10 and Option C, respectively. (See Hearing Report at 12-14.) The Hearing Report proposed that  
11 these geographic baseline averages be used to define “VMT-efficient” areas of the County,  
12 within which VMT would be expected to be 15% or more below the baseline average. (See  
13 Hearing Report at 10.)

14 56. The Hearing Report stated that average VMT in the San Diego region is 21.85  
15 miles per capita, while average VMT in the unincorporated area is 32.54 miles per capita.  
16 (Hearing Report at 12.) Average VMT in the unincorporated area is higher because “trips  
17 originating within the unincorporated area . . . tend to be fewer and longer in distance.” (*Id.*)

18 57. The Hearing Report did not compare the three proposed options for “geographic  
19 boundaries” based on their utility in determining total VMT, reflecting actual traffic patterns, or  
20 elucidating the relative significance of transportation-related environmental impacts.

21 58. Instead, the Hearing Report compared the three options primarily in terms of how  
22 much of the unincorporated County, and how many “potential dwelling units” contemplated in  
23 the County’s General Plan, would be exempt from VMT analysis and mitigation under each  
24 option.

25 59. The Hearing Report stated that Option A—using the San Diego region as the  
26 relevant geographic boundary—would result in 61,881 acres (2.7%) of the unincorporated  
27 County being designated “VMT efficient,” and would exempt approximately 1,108 potential  
28 dwelling units from VMT analysis. (Hearing Report at 12.) The Hearing Report further stated

1 that among other things, Option A would result in more VMT reductions, greater mitigation  
2 requirements for development projects in the unincorporated area, more development projects  
3 having to prepare environmental impact reports under CEQA, an increase in cost and time to  
4 process land development permits, and a decrease in developments within the unincorporated  
5 area. (*Id.*)

6 60. The Hearing Report stated that Option B—using the unincorporated County as the  
7 relevant geographic boundary—would result in 81,215 acres (3.5%) of the unincorporated  
8 County being designated “VMT efficient,” and would exempt approximately 18,940 potential  
9 dwelling units from VMT analysis. (Hearing Report at 12.) The Hearing Report further stated  
10 that Option B would result in “less required VMT reductions,” fewer development projects  
11 having to prepare environmental impact reports, reduced costs and time to process land  
12 development permits, and “less of a decrease” in developments within the unincorporated area.  
13 (*Id.* at 13.) According to the Hearing Report, Option B would provide an advantage to  
14 developments “along the western edge of the unincorporated area.” (*Id.*)

15 61. The Hearing Report stated that Option C—using “subareas within the  
16 unincorporated area” as the relevant geographic boundaries—would result in 85,550 acres  
17 (3.7%) of the unincorporated County being designated “VMT efficient,” and would exempt  
18 approximately 17,676 potential dwelling units from VMT analysis. (Hearing Report at 13.) The  
19 Hearing Report further stated that the effects of Option C on development would be similar to  
20 those of Option B, except that Option C would not “provide an advantage to villages along the  
21 western edge of the unincorporated area where we have seen more development occurring.”  
22 (*Id.*)

23 62. The Hearing Report recommended Option B—using the unincorporated area of  
24 the County as the “geographic boundary”—claiming that it “follows General Plan Goals and  
25 Policies” and “reflects the pattern of General Plan compliant development observed since 2011.”  
26 (Hearing Report at 13.)

27 63. According to the Hearing Report, the General Plan identifies the potential for  
28 60,748 dwelling units to be built across four regional land use categories. (Hearing Report at

1 11.) Option B would exempt 18,940 of these potential units—**about 31.2% of the County**  
2 **total**—from any requirement to analyze or mitigate transportation impacts under CEQA.

3 64. An appendix to the Draft Transportation Study Guide attached to the Hearing  
4 Report contained maps showing the location of proposed VMT efficient areas under Options A,  
5 B, and C. (Draft Transportation Study Guide, Appendix C.) These maps designate large areas of  
6 the unincorporated County as having “insufficient data to determine average VMT.” (*Id.*)  
7 Neither the Hearing Report nor the Draft Transportation Study Guide explained whether or how  
8 VMT would be analyzed or mitigated for projects in areas with “insufficient data to determine  
9 average VMT.”

10 65. In connection with the second policy decision—establishment of a “screening  
11 threshold” for “small” projects—the Hearing Report recommended that projects generating less  
12 than 110 average daily trips (“ADT”) be exempted from VMT analysis and mitigation  
13 requirements. (Hearing Report at 14.) Using this threshold, the Hearing Report concluded that  
14 *all* of the potential General Plan dwelling unit capacity in the rural and semi-rural land use  
15 categories—approximately 30,860 potential General Plan dwelling units, or **roughly 50% of**  
16 **the County total**—would be “exempt from SB 743.” (*Id.* at 10.)

17 66. In connection with the third policy decision—establishment of a “threshold of  
18 significance”—the Hearing Report proposed that projects with VMT at least 15% below the  
19 existing regional VMT average be found to have less-than-significant transportation impacts.  
20 (Hearing Report at 14-15.)

21 67. The Draft Transportation Study Guidelines indicated that the same “regional”  
22 average baseline used to designate “VMT efficient” areas of the County would be used in  
23 applying the project-specific threshold of significance. (See Draft Transportation Study  
24 Guidelines at 19.)

25 68. The Hearing Report and findings accompanying a draft Planning Commission  
26 resolution proposed that the County find its approval of the Transportation Study Guidelines and  
27 associated thresholds of significance exempt from CEQA.

28 69. The Hearing Report and findings stated four basic rationales for finding the project

1 exempt from CEQA: (1) the project is not a “project” under CEQA because it simply “codifies  
2 existing law”; (2) the project is exempt from CEQA as a “ministerial” action because the County  
3 must comply with SB 743; (3) the project is exempt pursuant to CEQA Guidelines section  
4 15308, which exempts public agency actions to enhance or protect the environment; and (4) the  
5 project is subject to CEQA’s “common sense” exception (see CEQA Guidelines section  
6 15061(b)(3)) because it can be seen with a certainty that there is no possibility the project may  
7 have a significant environmental impact. (Hearing Report at 18-19 & Attachment A, Ex. A.)

8         70. Individuals and organizations submitted comments to the Planning Commission  
9 objecting to the Draft Transportation Study Guide and accompanying thresholds of significance.  
10 Comments objected, among other things, to the proposed selection of the unincorporated County  
11 as the “geographic boundary” for determining existing average VMT.

12         71. Notwithstanding these objections, the Planning Commission on May 15, 2020  
13 voted 5-2 to recommend approval of the staff recommendations outlined in the Hearing Report.

14         72. Individuals and organizations continued to submit comments to Planning and  
15 Development Services objecting to the Draft Transportation Study Guidelines and thresholds of  
16 significance.

17         73. CNFF submitted comments to Planning and Development Services dated June 8,  
18 2020. Among other objections, CNFF’s comments addressed the following:

19             a. The thresholds of significance recommended in the Hearing Report and  
20 Draft Transportation Study Guidelines, which would use the unincorporated County as the  
21 “geographic boundary” for calculating existing regional VMT, were unsupported by substantial  
22 evidence.

23             b. The recommended “geographic boundary” lacked support because it was  
24 not established to reflect actual travel patterns or indicate the significance of environmental  
25 impacts. Rather, the “geographic boundary” was established in order to exempt future  
26 developments from VMT analysis and mitigation requirements and to promote certain kinds of  
27 development in certain locations.

28             c. The recommended “geographic boundary” conflicted with clear guidance in

1 the Technical Advisory regarding the “region” to be used in calculating existing average VMT.

2 d. The recommended “threshold of significance” was unsupported because it  
3 relied on the average VMT derived from the flawed “geographic boundary” as a baseline for  
4 comparison.

5 e. The “screening threshold” recommended in the Hearing Report and Draft  
6 Transportation Study Guidelines was unsupported by substantial evidence.

7 f. The “screening threshold” departed significantly from and was unsupported  
8 by the rationale articulated for such threshold in the Technical Advisory.

9 g. By focusing solely on the *number* of daily trips, the “screening threshold”  
10 failed to account for the *length* of trips originating in the unincorporated County, and thus failed  
11 to serve as a rational proxy for VMT.

12 h. The “screening threshold” had the counterintuitive and counterfactual effect  
13 of exempting *all* potential General Plan development in rural and semi-rural land use categories  
14 from VMT analysis and mitigation requirements.

15 i. Each of the County’s proposed rationales for finding adoption of the Draft  
16 Transportation Study Guidelines and associated thresholds of significance exempt from CEQA  
17 was contrary to law and without substantial evidentiary support.

18 j. Adoption of the Draft Transportation Study Guidelines and thresholds of  
19 significance had the potential to cause a direct or reasonably foreseeable indirect effect on the  
20 environment, and thus met the definition of a “project” in CEQA Guidelines section 15378.  
21 Among other things, the recommended thresholds of significance would result in increased  
22 greenhouse gas emissions. The thresholds also were proposed explicitly because they would  
23 encourage particular kinds of development and direct it to particular locations, which itself may  
24 cause environmental impacts.

25 k. Adoption of the Draft Transportation Study Guidelines and thresholds of  
26 significance was not exempt from CEQA as a ministerial action.

27 l. Adoption of the Draft Transportation Study Guidelines and thresholds of  
28 significance was not exempt from CEQA as a proposal for legislation to be enacted by the State



1 Legislature.

2 m. Adoption of the Draft Transportation Study Guidelines and thresholds of  
3 significance was not exempt from CEQA as an action to protect or enhance the environment. On  
4 the contrary, the Project would reduce environmental protection by increasing greenhouse gas  
5 emissions and exempting the vast majority of potential residential development under the  
6 General Plan from analysis and mitigation requirements necessary to protect and enhance the  
7 environment.

8 n. Adoption of the Draft Transportation Study Guidelines and thresholds of  
9 significance was not exempt from CEQA under the “common sense” exception.

10 o. The Draft Transportation Study Guidelines and thresholds of significance  
11 conflicted with SB 743.

12 74. CERF also submitted comments to Planning and Development Services dated June  
13 8, 2020. Among other things, CERF objected that using the unincorporated County to determine  
14 average existing regional VMT not only would conflict with both the Technical Advisory and  
15 SB 743, but also would cause increased greenhouse gas emissions and air quality impacts.

16 75. Sierra Club submitted comments to the San Diego County Board of Supervisors  
17 dated June 8, 2020. Among other objections, Sierra Club’s comments addressed the following:

18 a. The Draft Transportation Study Guidelines improperly relied on the  
19 County’s Climate Action Plan in concluding that the overall “VMT trend” in the County “can be  
20 considered downward.” The Climate Action Plan had been ordered set aside by the Superior  
21 Court for the County of San Diego, and further did not support the conclusion stated in the Draft  
22 Transportation Study Guidelines.

23 b. Adoption of the unincorporated County as the “geographic boundary” for  
24 analysis would be a discretionary project with the potential to have a significant effect on the  
25 environment, and thus would require CEQA review. Specifically, exempting developments in  
26 rural and semi-rural areas from VMT analysis using the proposed “screening” threshold would  
27 increase both greenhouse gas emissions and emissions of conventional air pollutants such as  
28 ozone, threatening compliance with both state and federal targets and standards.

1 c. The County’s decisions to exempt future developments from VMT analysis  
2 and mitigation, and its determinations regarding the potential environmental impacts of the Draft  
3 Transportation Study Guidelines, were not supported by substantial evidence.

4 d. The Draft Transportation Study Guidelines adopted a methodology that  
5 impermissibly created a presumption that exempt projects would not result in air quality, noise,  
6 safety, or other transportation-related impacts, in violation of SB 743. (Pub. Resources Code §  
7 21099(b)(3).)

8 e. The thresholds in the Draft Transportation Study Guidelines are not linked  
9 to meeting statewide goals for GHG reduction.

10 f. The Draft Transportation Study Guidelines proposed only vague,  
11 conceptual, and inadequately supported measures for mitigating VMT impacts. Moreover, the  
12 measures proposed in the Draft Transportation Study Guidelines would not address localized  
13 impacts of VMT on air quality.

14 g. The screening process proposed in the Draft Transportation Study  
15 Guidelines for determining whether future projects would be subject to VMT analysis would be  
16 conducted entirely out of public view, in violation of CEQA’s information disclosure and public  
17 accountability requirements.

18 76. On June 12, 2020, the Fourth District Court of Appeal, Division One, issued an  
19 opinion affirming the San Diego County Superior Court’s judgment and writ of mandate  
20 ordering that the County’s February 2018 approval of its Climate Action Plan be set aside and  
21 vacated. (*Golden Door Properties, LLC v. County of San Diego* (2020) 50 Cal.App.5th 467.)

22 **B. The Board of Supervisors’ Consideration and Approval of the Project**

23 77. The San Diego County Board of Supervisors held a hearing to consider the Draft  
24 Transportation Study Guidelines and thresholds of significance on June 24, 2020.

25 78. County staff prepared a report to the Board of Supervisors (“Board Letter”)  
26 regarding the proposal.

27 79. The Board Letter acknowledged that in comparison to the County’s incorporated  
28 cities, “the number of vehicle trips in the unincorporated area are less in quantity, but longer in

1 distance. Lacking transit services and with a much less developed road network, many of the  
2 residents within the unincorporated area drive to the cities for employment and services.” (Board  
3 Letter at 7.)

4 80. The Board Letter reiterated that the Board would need to make several “policy  
5 decisions” to implement SB 743, including three “decision points”: (1) defining a significance  
6 threshold, i.e., the level at which transportation impacts from a proposed project would be  
7 presumed significant; (2) defining a “geographic boundary to determine the average VMT”; and  
8 (3) “establishing project screening criteria for projects that do not have to conduct a VMT  
9 analysis.” (Board Letter at 10.)

10 81. The Board Letter presented two options for the first decision point (the  
11 “significance threshold”): 15% below the average VMT, or less than 15% below the average  
12 VMT, based on the geographic boundary chosen in the second decision point. (Board Letter at  
13 11.) Staff recommended the first option: 15% below average VMT. (*Id.* at 11-12.)

14 82. The Board Letter presented three options for the second decision point (the  
15 “geographic boundary” used to establish average VMT): the San Diego region; the  
16 unincorporated County; and subregions within the unincorporated County. (Board Letter at 11.)

17 83. The Board Letter stated that using the San Diego region as the geographic  
18 boundary would result in an average VMT of 21.85 miles. According to the Board Letter, this  
19 option may likely result in “[t]he greatest amount of [greenhouse gas] reductions,” higher levels  
20 of CEQA analysis, higher mitigation requirements for projects in the unincorporated area,  
21 “[l]east benefit to infill development in the unincorporated area,” and “[m]inimal incentive to  
22 locate development” in the western portion of the unincorporated area. (Board Letter at 13.)

23 84. The Board Letter further stated that using the San Diego region as the geographic  
24 boundary would provide “only 2,467 acres of VMT efficient areas” and would exempt  
25 approximately 1,108 “potential General Plan dwelling units” from VMT analysis. (Board Letter  
26 at 13.)

27 85. The Board Letter stated that using the unincorporated County as the geographic  
28 boundary would “increase[] the VMT average for the unincorporated area to 32.54 miles.”

1 (Board Letter at 13.) According to the Board Letter, this option would likely result in “[n]ot as  
2 much GHG reductions with not as many General Plan compliant projects subject to a higher  
3 level of CEQA analysis” and mitigation requirements, the “greatest benefit to infill development  
4 in the unincorporated area,” and “the greatest incentive to locate” development in the western  
5 portion of the unincorporated area. (*Id.* at 14.)

6 86. The Board Letter further stated that using the unincorporated County as the  
7 geographic boundary would result in 45,444 acres of VMT efficient areas and would exempt  
8 approximately 18,940 potential General Plan dwelling units from VMT analysis and mitigation.  
9 (Board Letter at 13.)

10 87. An appendix to the Draft Transportation Study Guidelines attached to the Board  
11 Letter further explained that using the unincorporated County as the geographic boundary would  
12 support the County’s “ability to establish thresholds that reflect agency specific goals and  
13 policies.” (Draft Transportation Study Guidelines, Appx. F at F-2.)

14 88. The Board Letter stated that using subareas within the unincorporated County as  
15 the geographic boundary would result in average VMT ranging from 29.79 to 64.43 miles.  
16 (Board Letter at 14.) The Board Letter found that this option would be similar to the option of  
17 using the unincorporated County, except that it would not create incentives to locate as much  
18 development in the western portion of the unincorporated area. (*Id.* at 14-15.) The Board Letter  
19 further found the subarea option would exempt approximately 17,676 potential General Plan  
20 dwelling units from VMT analysis.

21 89. Staff again recommended using the unincorporated County as the geographic  
22 boundary to determine average VMT. (Board Letter at 15.)

23 90. The Board Letter presented two options for the third decision point (the  
24 “screening” threshold for small projects): exclude projects with less than 110 ADT, or exclude  
25 projects with less than 200 ADT (based on SANDAG trip generation rates). (Board Letter at  
26 11.)

27 91. Staff again recommended a “screening” threshold under which projects generating  
28 fewer than 110 ADT would be exempt from VMT analysis and mitigation requirements. (Board

1 Letter at 17-18.)

2 92. The Board Letter asserted that the County’s adoption of the Transportation Study  
3 Guidelines and thresholds of significance would be exempt from CEQA for four basic reasons:  
4 (1) the Project is not a “project” as defined in CEQA because it has no potential to cause a  
5 physical change in the environment; (2) the Project is exempt under CEQA Guidelines section  
6 15378(b)(1), which excludes “proposals for legislation to be enacted by the State Legislature”  
7 from CEQA’s definition of a “project”; (3) the Project is ministerial; and (4) the project is  
8 exempt under CEQA Guidelines section 15308, which exempts actions to enhance or protect the  
9 environment. (Board Letter at 20-21.) An exhibit to the draft resolution attached to the Board  
10 Letter articulated the same basic rationales for finding the Project exempt from CEQA. (Board  
11 Letter Attachment A, Ex. A.)

12 93. Numerous individuals and organizations filed comments with the Board of  
13 Supervisors objecting to the proposed Transportation Study Guidelines and thresholds of  
14 significance.

15 94. CNFF filed comments with the Board of Supervisors dated June 22, 2020,  
16 objecting to adoption of the Transportation Study Guidelines and thresholds of significance on  
17 numerous grounds, including the following:

18 a. Substantial evidence did not support using the unincorporated County as  
19 the geographic boundary for determining VMT.

20 b. The proposed thresholds of significance were not based on any  
21 determination as to whether environmental impacts would be significant, but rather on an effort  
22 to exempt as much development as possible from VMT analysis and to thereby create incentives  
23 for development in certain locations. The proposed thresholds therefore were unsupported by  
24 substantial evidence.

25 c. The proposed “screening” threshold for small projects was unsupported by  
26 substantial evidence.

27 d. The proposed rationales for finding approval of the project exempt from  
28 CEQA lacked both legal and evidentiary support.

1           95. CERF filed comments with the Board of Supervisors dated June 23, 2020,  
2 objecting to adoption of the Transportation Study Guidelines and thresholds of significance on  
3 numerous grounds, including the following:

4           a. The County’s proposed approach would undermine the intent of SB 743  
5 and the state’s greenhouse gas reduction goals.

6           b. The County’s proposed approach would incentivize inefficient sprawl  
7 development and result in significant environmental impacts, including increases in greenhouse  
8 gas emissions and air pollution as well as greater VMT.

9           c. The proposed “screening” threshold did not accurately reflect the true VMT  
10 impact of rural and semi-rural development.

11           d. The CEQA exemptions relied on in the Board Letter were inapplicable and  
12 inconsistent.

13           96. At the June 24, 2020 Board of Supervisors meeting, Supervisor Fletcher  
14 introduced a motion to use the San Diego region, including incorporated cities and the  
15 unincorporated County, as the “geographic boundary” for establishing average VMT. The  
16 motion failed for lack of a second.

17           97. On the motion of Supervisor Jacob, seconded by Supervisor Gaspar, the Board of  
18 Supervisors instead voted 4-1 to:

19           a. Adopt Resolution No. 20-082, adopting the Transportation Study Guide  
20 and thresholds of significance for vehicle miles traveled;

21           b. Use the unincorporated County as the “geographic boundary” for  
22 establishing VMT;

23           c. Establish a significance threshold of 15% below average VMT; and

24           d. Adopt “screening” criteria that would exclude projects generating less than  
25 110 daily vehicle trips from VMT analysis and mitigation; and

26           e. Find the proposed resolution complies with CEQA because: (1) it is not a  
27 “project” as defined in CEQA and the CEQA Guidelines, and therefore is not subject to CEQA;  
28 (2) it is considered “ministerial” because the County is mandated to comply with SB 743; (3) it

1 is categorically exempt under CEQA Guidelines section 15308 as an action taken to enhance  
2 and protect the environment; and (4) it is subject to the “common sense” exemption because it  
3 implements existing law and therefore has no possibility of causing a significant impact on the  
4 environment.

5 98. The County filed a notice of exemption regarding the project on July 9, 2020.

6 **FIRST CAUSE OF ACTION**

7 **Violations of CEQA – Against All Respondents**

8 **Lack of Substantial Evidence to Support Adopted Thresholds of Significance**

9 **(Public Resources Code § 21000 et seq; CEQA Guidelines;**

10 **CCP §§ 1085, 1094.5)**

11 99. Petitioners hereby reallege and incorporate by reference the preceding paragraphs  
12 in their entirety.

13 100. CEQA is designed to ensure that government agencies incorporate the goal of  
14 long-term protection of the environment into their decisions. CEQA applies to any discretionary  
15 action taken by an agency that may cause a reasonably foreseeable change in the environment.

16 101. Public agencies may not approve projects as proposed if there are feasible  
17 mitigation measures or alternatives that would substantially lessen the significant environmental  
18 effects of those projects. (Pub. Resources Code § 21002.) Public agencies are thus required to  
19 mitigate or avoid the significant environmental effects of projects they approve whenever it is  
20 feasible to do so. (Pub. Resources Code § 21002.1(b).)

21 102. “Determining whether a project may have a significant effect plays a critical role  
22 in the CEQA process.” (CEQA Guidelines § 15064(a).) If there is substantial evidence in light  
23 of the whole record that a project may have a significant effect on the environment, the lead  
24 agency must prepare an environmental impact report. (CEQA Guidelines § 15064(a)(1).) And if  
25 the final environmental impact report identifies one or more significant effects, the agency must  
26 make specific findings that feasible mitigation measures or alternatives that reduce or avoid  
27 those effects have been incorporated into the project. (CEQA Guidelines § 15064(a)(2); see Pub.  
28 Resources Code § 21081.)

1           103. The determination of whether an impact is significant “calls for careful judgment”  
2 on the part of the public agency, “based to the extent possible on scientific and factual data.”  
3 (CEQA Guidelines § 15064(b)(1).)

4           104. A “threshold of significance” is “an identifiable quantitative, qualitative, or  
5 performance level of a particular environmental effect, non-compliance with which means the  
6 effect will normally be determined to be significant by the agency and compliance with which  
7 means the effect normally will be determined to be less than significant.” (CEQA Guidelines §  
8 15064.7(a).)

9           105. Thresholds of significance may assist public agencies in determining whether an  
10 environmental impact is significant. (CEQA Guidelines § 15064(b)(2).) However, compliance  
11 with a threshold of significance does not relieve an agency of responsibility for determining  
12 whether substantial evidence indicates an impact may be significant notwithstanding compliance  
13 with the threshold. (*Id.*; *Protect the Historic Amador Waterways v. Amador Water Agency*  
14 (2004) 116 Cal.App.4th 1099, 1106–1107.)

15           106. An agency’s determination as to whether an environmental impact is significant  
16 must be based on substantial evidence in the record. (CEQA Guidelines § 15064(f).)

17           107. Thresholds of significance serve the same purpose: to aid the agency in  
18 determining whether environmental impacts are significant. Accordingly, a threshold of  
19 significance adopted by a public agency for general use in that agency’s environmental review  
20 process also must be supported by substantial evidence. (CEQA Guidelines § 15064.7(b).)

21           108. The thresholds of significance contained within the Transportation Study  
22 Guidelines are not supported by substantial evidence.

23           109. Respondents’ decision to use the unincorporated County as the “geographic  
24 boundary” for calculating existing average baseline VMT was unsupported by substantial  
25 evidence for several reasons:

26           a. The County’s decision was not based on substantial evidence that using the  
27 unincorporated County as the “geographic boundary” would result in a threshold of significance  
28 that rationally distinguishes between significant and less-than-significant environmental



1 impacts.

2           b.       The County’s decision was not based on substantial evidence that using the  
3 unincorporated County as the “geographic boundary” accurately reflected actual existing travel  
4 patterns and VMT in the San Diego region.

5           c.       The County’s choice of a “geographic boundary” instead reflects an attempt  
6 to exempt certain types of development in certain locations from VMT analysis and mitigation,  
7 and thereby to create incentives that would direct development to certain locations by reducing  
8 perceived burdens of CEQA compliance. Such exemptions and perceived incentives are not the  
9 type of substantial evidence that CEQA requires to support a threshold of significance or a  
10 determination regarding the significance or non-significance of environmental impacts.

11           d.       The County chose a “geographic boundary” that supported its ability to  
12 reflect its own planning goals and policies, rather than a boundary that would aid the County in  
13 distinguishing significant from less-than-significant environmental impacts. The County’s  
14 preconceived planning goals and policies are not the type of substantial evidence that CEQA  
15 requires in order to support adoption of a threshold of significance or a determination of  
16 significance.

17           e.       The County’s decision was unsupported by, and directly conflicted with,  
18 recommendations in the Technical Advisory to use “regional” average VMT as the baseline for  
19 analysis. The “region” referenced in the Technical Advisory was the “region” subject to  
20 metropolitan planning organization jurisdiction—here, the San Diego region under SANDAG’s  
21 jurisdiction.

22           110.    Because the County’s selection of the unincorporated area as the “geographic  
23 region” was unsupported by substantial evidence, the County’s designation of “VMT efficient”  
24 areas where VMT analysis will not be required also was unsupported by substantial evidence.

25           111.    Because the County’s selection of the unincorporated area as the “geographic  
26 region” was unsupported by substantial evidence, the thresholds of significance of 15% below  
27 average existing VMT adopted in the Transportation Study Guidelines were unsupported by  
28 substantial evidence.

1 112. Respondents’ decision to adopt a “screening” threshold exempting projects  
2 generating less than 110 ADT was unsupported by substantial evidence for several reasons:

3 a. The “screening” threshold took into account only the number of daily trips,  
4 not their length. Vehicle trips originating in rural and semi-rural areas of the County are longer  
5 than vehicle trips originating elsewhere. Accordingly, there is no substantial evidence ADT  
6 serves as an adequate proxy for VMT in the unincorporated County.

7 b. Available trip-generation data do not support the “screening” threshold.

8 c. The Technical Advisory does not provide substantial evidence to support  
9 the County’s application of the “screening” threshold to rural and semi-rural residential  
10 development.

11 d. The County’s attempt to exempt all residential development in rural and  
12 semi-rural areas—where vehicle trips are likely to be the longest—from VMT analysis is  
13 unsupported by substantial evidence.

14 113. The Transportation Study Guidelines impermissibly relied on the County’s  
15 Climate Action Plan in concluding that VMT trends in the County are on a downward trajectory.  
16 The Climate Action Plan has been found invalid by both the San Diego County Superior Court  
17 and the Court of Appeal, and has been ordered vacated and set aside. The Climate Action Plan  
18 does not provide substantial evidence in support of the Project.

19 114. The County prejudicially abused its discretion in adopting thresholds of  
20 significance that are unsupported by substantial evidence.

21 **SECOND CAUSE OF ACTION**

22 **Violations of CEQA – Against All Respondents**

23 **Improper Determination that Project is Exempt from CEQA**

24 **(Pub. Resources Code § 21000 et seq.; CCP §§ 1085, 1094.5)**

25 115. Petitioners hereby reallege and incorporate by reference the preceding paragraphs  
26 in their entirety.

27 116. Respondents prejudicially abused their discretion by finding and determining that  
28 their adoption of the Transportation Study Guidelines and thresholds of significance was exempt

1 from CEQA. As a result, Respondents failed to disclose or evaluate the potentially significant  
2 environmental effects of their actions, and further failed to consider mitigation measures and  
3 alternatives that could lessen or avoid those impacts.

4 117. Each of Respondents’ rationales for finding the Project exempt from CEQA is  
5 both legally erroneous and unsupported by substantial evidence.

6 118. Adoption of the Transportation Study Guidelines and thresholds of significance is  
7 a “project” under CEQA because it has the potential to cause direct or reasonably foreseeable  
8 indirect changes in the environment. (Pub. Resources Code § 21065; CEQA Guidelines §  
9 15378.) The Project is not subject to any of the exceptions to the definition of a “project”  
10 provided in CEQA Guidelines section 15378(b), including the exception for proposed state  
11 legislation.

12 119. The Project is not exempt from CEQA as a ministerial action.

13 120. The Project is not subject to the categorical exemption in CEQA Guidelines  
14 section 15308 for agency actions taken to protect or enhance the environment.

15 121. The Project is not subject to CEQA’s “common sense” exception (CEQA  
16 Guidelines section 15061(b)(3)) because it cannot be seen with a certainty that there is no  
17 possibility the Project may have a significant environmental impact.

18 **THIRD CAUSE OF ACTION**

19 **Violation of State Law – Declaratory Relief – Against All Respondents**

20 **Conflict with SB 743**

21 **(CCP § 1060)**

22 122. Petitioners hereby reallege and incorporate by reference the preceding paragraphs  
23 in their entirety.

24 123. An actual and immediate controversy has arisen and now exists regarding the  
25 legality of the County’s action in adopting Transportation Study Guidelines and thresholds of  
26 significance that could exempt the vast majority of potential General Plan dwelling units from  
27 the VMT analysis and mitigation required by SB 743.

28 124. SB 743 mandates that “criteria” for determining the significance of transportation

1 impacts “promote the reduction of greenhouse gas emissions, the development of multimodal  
2 transportation networks, and a diversity of land uses.” (Pub. Resources Code § 21099(b)(1).)

3 125. The Technical Advisory states that local agencies should select thresholds of  
4 significance for transportation impacts that align with all three of these goals.

5 126. The County’s Transportation Study Guidelines and thresholds of significance not  
6 only fail to align with the goals of SB 743, but also directly conflict with and undermine the  
7 Legislature’s purpose and intent in enacting SB 743.

8 127. The primary purpose and effect of the Transportation Study Guidelines and  
9 thresholds of significance is to exempt development in large areas of the County from any  
10 requirement to analyze transportation impacts under CEQA. Under the County’s thresholds, the  
11 vast majority of potential General Plan dwelling units (units in “VMT efficient” areas and  
12 residential developments in rural and semi-rural land use categories) would not be required to  
13 analyze or mitigate VMT.

14 128. The Board of Supervisors expressly rejected a motion to select the “geographic  
15 boundary” for establishing average VMT that would have achieved the greatest greenhouse gas  
16 reductions among the options considered. Instead, the County selected the geographic boundary  
17 for establishing existing average VMT that would exempt the *most* potential development from  
18 VMT analysis requirements, achieve the *least* greenhouse gas emissions, and require the *least*  
19 analysis and mitigation of transportation impacts.

20 129. Achieving California’s legislatively mandated climate goals will require  
21 reductions in VMT. Yet there is no evidence that the Transportation Study Guidelines and  
22 associated thresholds of significance will actually reduce VMT in the County.

23 130. The Transportation Study Guidelines impermissibly create a presumption that  
24 future projects will not result in significant impacts related to air quality, noise, safety, or other  
25 impacts associated with transportation, and thus violate the plain requirements of SB 743. (Pub.  
26 Resources Code § 21099(b)(3).)

27 131. A judicial declaration is necessary and appropriate at this time in order that the  
28 parties ascertain the correct interpretation of SB 743 in light of its contemporaneous

1 construction by the Office of Planning and Research, and further ascertain their rights and  
2 obligations with respect to the selection of thresholds of significance necessary to comply with  
3 and implement SB 743.

4 132. Therefore, Petitioners seek a declaration that the County's action in approving  
5 Transportation Study Guidelines and thresholds of significance that will achieve the least  
6 greenhouse gas reductions of the options considered and interfere with disclosure and mitigation  
7 of other transportation impacts, while at the same time exempting the vast majority of potential  
8 General Plan dwelling units from VMT analysis and mitigation, conflicts with the intent and  
9 purpose of SB 743, is an abuse of discretion, or otherwise fails to comply with the law.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Petitioners pray for judgment as follows:

12 1. Alternative and peremptory writs of mandate directing the County to vacate and  
13 set aside all approvals related to the SB 743 Implementation Project, including adoption of  
14 Resolution No. 20-082, the Transportation Study Guidelines, associated thresholds of  
15 significance, and accompanying findings and determinations;

16 2. Alternative and peremptory writs of mandate directing the County to comply with  
17 the requirements of CEQA and to take any other action as required by Public Resources Code  
18 section 21168.9;

19 3. For a temporary stay, temporary restraining order, and preliminary and permanent  
20 injunctions restraining Respondents and their agents, servants, and employees, and all others  
21 acting in concert with Respondents on their behalf, from taking any action to implement the SB  
22 743 Implementation Project, pending full compliance with the requirements of CEQA, the  
23 CEQA Guidelines, and other applicable authority;

24 4. For a declaration that the SB 743 Implementation Project as adopted conflicts with  
25 and impedes the purposes and intent of SB 743;

26 5. For costs of the suit;

27 6. For an order awarding Petitioners their attorneys' fees under Code of Civil  
28 Procedure section 1021.5 and other applicable authority; and

1           7.       For such other and further relief as the Court deems just and proper.

2  
3 DATED: September 4, 2020

SHUTE, MIHALY & WEINBERGER LLP

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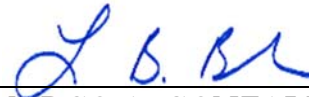
7 By: \_\_\_\_\_

KEVIN P. BUNDY

8  
9 Attorney for Petitioners and Plaintiffs  
10 CLEVELAND NATIONAL FOREST  
11 FOUNDATION and COASTAL  
12 ENVIRONMENTAL RIGHTS FOUNDATION

13 DATED: September 3, 2020

COAST LAW GROUP, LLP

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18 By: \_\_\_\_\_

MARCO A. GONZALEZ  
LIVIA BORAK BEAUDIN

19  
20 Attorneys for Petitioner and Plaintiff  
21 COASTAL ENVIRONMENTAL RIGHTS  
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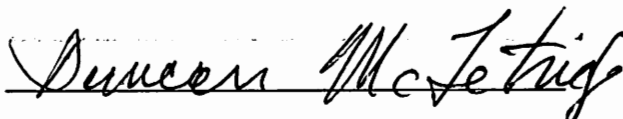
1 **VERIFICATION**

2 I, Duncan McFetridge, declare as follows:

3 I am the Director of the Cleveland National Forest Foundation and am authorized to  
4 execute this verification on its behalf. I have read the foregoing Petition for Writ of Mandate and  
5 Complaint for Declaratory and Injunctive Relief and am familiar with its contents. All facts  
6 alleged in the above Petition, and not otherwise supported by exhibits or other documents, are  
7 true of my own knowledge, except to matters stated on information and belief, and as to those  
8 matters, I believe them to be true.

9 I declare under penalty of perjury that the above is true and correct.

10  
11 Executed this 3 day of September, 2020, in DESCANSO, California.

12  
13 

14 Duncan McFetridge


1 **VERIFICATION**

2 I, Sara Kent, declare as follows:

3 I am Programs Director of Coastal Environmental Rights Foundation and am authorized  
4 to execute this verification on its behalf. I have read the foregoing Petition for Writ of Mandate  
5 and Complaint for Declaratory and Injunctive Relief and am familiar with its contents. All facts  
6 alleged in the above Petition, and not otherwise supported by exhibits or other documents, are  
7 true of my own knowledge, except to matters stated on information and belief, and as to those  
8 matters, I believe them to be true.

9 I declare under penalty of perjury that the above is true and correct.

10  
11 Executed this 3rd day of September, 2020, in Chula Vista, California.

12  
13   
14 \_\_\_\_\_  
15 Sara Kent



# **EXHIBIT**

**A**

SHUTE MIHALY  
& WEINBERGER LLP

396 HAYES STREET, SAN FRANCISCO, CA 94102  
T: (415) 552-7272 F: (415) 552-5816  
www.smwlaw.com

KEVIN P. BUNDY  
Attorney  
bundy@smwlaw.com

September 2, 2020

**Via E-Mail and U.S. Mail**

Chair Greg Cox and Members of the  
Board of Supervisors  
1600 Pacific Highway, Room 335  
San Diego, CA 92101  
E-Mail: greg.cox@sdcounty.ca.gov

Clerk of the Board of Supervisors  
County of San Diego  
1600 Pacific Highway  
San Diego, CA 92101  
E-Mail: andrew.potter@sdcounty.ca.gov

Mark Wardlaw  
Director  
Planning and Development Services  
5510 Overland Avenue  
San Diego, CA 92123  
E-Mail: mark.wardlaw@sdcounty.ca.gov

Re: Notification of CEQA Lawsuit:  
Cleveland National Forest Foundation, et al. v. County of San Diego, et al.

To Whom it May Concern:

This letter is to notify you that Cleveland National Forest Foundation and Coastal Environmental Rights Foundation will file suit against the County of San Diego, San Diego County Board of Supervisors, and Planning and Development Services for failure to comply with the requirements of the California Environmental Quality Act (“CEQA”), Public Resources Code section 21000 et seq., the CEQA Guidelines, California Code of Regulations section 15000 et seq., and other state laws in connection with the County’s June 24, 2020 decision to approve Transportation Study Guidelines and associated thresholds of significance for implementation of Senate Bill 743. This notice is given pursuant to Public Resources Code section 21167.5.

Petitioners will also seek an award of attorneys’ fees under Code of Civil Procedure section 1021.5. This letter is to provide notice of the same pursuant to *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 577. Petitioners recognize the public interest would be best served if the County were to voluntarily comply with its statutory

Chair Greg Cox and Members of the Board of Supervisors  
Clerk of the Board of Supervisors  
Mark Wardlaw  
September 2, 2020  
Page 2

duties in order to avoid the unnecessary expenses of litigation. If the County is interested in attempting to resolve this matter short of litigation, please contact me immediately.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP

A handwritten signature in black ink, appearing to read "Kevin P. Bundy", written over a faint horizontal line.

Kevin P. Bundy

1283410.3

**PROOF OF SERVICE**

***Cleveland National Forest Foundation, et al. v. County of San Diego, et al.***  
**San Diego County Superior Court**

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of San Francisco, State of California. My business address is 396 Hayes Street, San Francisco, CA 94102.

On September 2, 2020, I served true copies of the following document(s) described as:

**NOTIFICATION OF CEQA LAWSUIT**

on the parties in this action as follows:

Chair Greg Cox and  
Members of the Board of Supervisors  
1600 Pacific Highway, Room 335  
San Diego, CA 92101  
E-Mail: greg.cox@sdcounty.ca.gov

Clerk of the Board of Supervisors  
County of San Diego  
1600 Pacific Highway  
San Diego, CA 92101  
E-Mail: andrew.potter@sdcounty.ca.gov

Mark Wardlaw, Director  
Planning and Development Services  
5510 Overland Avenue  
San Diego, CA 92123  
E-Mail: mark.wardlaw@sdcounty.ca.gov

**BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Shute, Mihaly & Weinberger LLP's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

**BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused a copy of the document(s) to be sent from e-mail address Weibel@smwlaw.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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

Executed on September 2, 2020, at San Francisco, California.



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David Weibel

**EXHIBIT**

**B**

SHUTE MIHALY  
& WEINBERGER LLP

396 HAYES STREET, SAN FRANCISCO, CA 94102  
T: (415) 552-7272 F: (415) 552-5816  
www.smwlaw.com

KEVIN P. BUNDY  
Attorney  
bundy@smwlaw.com

September 4, 2020

**Via U.S. Mail**

Xavier Becerra  
Attorney General  
California Department of Justice  
1300 I Street  
Sacramento, CA 95814-2919

Re: Notice of Filing of CEQA Litigation  
(Cleveland National Forest Foundation, et al. v. County of San Diego, et al.)

Dear Attorney General Becerra:

Enclosed please find a copy of the Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief in the above-titled action. This petition is provided to you in compliance with Public Resources Code section 21167.7 and Code of Civil Procedure section 388. Please acknowledge receipt in the enclosed prepaid, self-addressed envelope.

Thank you for your attention to this matter.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Kevin P. Bundy

Encl.: Verified Petition for Writ of Mandate and Complaint for Declaratory and  
Injunctive Relief

**PROOF OF SERVICE**

***Cleveland National Forest Foundation, et al. v. County of San Diego, et al.***  
**San Diego County Superior Court**

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of San Francisco, State of California. My business address is 396 Hayes Street, San Francisco, CA 94102.

On September 4, 2020, I served true copies of the following document(s) described as:

**NOTICE OF FILING CEQA LITIGATION TO ATTORNEY GENERAL**

on the parties in this action as follows:

Xavier Becerra  
Attorney General  
California Department of Justice  
1300 I Street  
Sacramento, CA 95814-2919

**BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Shute, Mihaly & Weinberger LLP's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

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

Executed on September 4, 2020, at Union City, California.



---

David Weibel